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NO. 96-

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1996

JOHNNY DUPREE et al.,

Appellants,

vs.

MIKE MOORE et al.,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

JURISDICTIONAL STATEMENT

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QUESTIONS PRESENTED

Whether the District Court had authority (i) to stay its own judgment after the Supreme Court issued its certified judgment or (ii) to stay the judgment of the Supreme Court?

Whether events anticipated at the time a final judgment is entered can support post-judgment relief under Fed. R. Civ. P. 60(b)(5) or (6)?

Whether the District Court's order staying enforcement of an unprecleared statute undermines the Voting Rights Act?

Whether judicial preclearance by the District of Columbia District Court operates to preclear retroactively a statute that was never properly submitted for administrative preclearance?

PARTIES TO PROCEEDINGS BELOW

The Appellants (Plaintiffs below) are Johnny Dupree, Jeff R. Bowman, Catherine Jones and Charlotte Tullos, individually and in their official capacities as members of the Board of Trustees of the Hattiesburg Public School District. The current Board members are Dr. Joe Paul, Roger McDowell, Daisy Thorne, Sam Buchanan and Warren G. Hood.

The Appellees (Defendants below) are Mike Moore, in his capacity as Attorney General of Mississippi, and the State of Mississippi.

The other Appellees (Defendants/Intervenors below) are The Lamar County Board of Education and Trustees, in their official capacities, and the Forrest County School District and Members of its Board of Trustees, in their official capacities.

The United States of America has participated as amicus curiae to this proceeding since March 25, 1991.

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IN THE

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October Term, 1996

No. 96-_____

JOHNNY DUPREE et al.,

Appellants,

vs.

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Appellees.

INTRODUCTION

The Appellants file this direct appeal from an order of the United States District Court for the Southern District of Mississippi, dated July 30, 1996 and the court's denial on August 19, 1996, of Appellants' motion to vacate the order. The District Court held that the injunction granted under § 5 of the Voting Rights Act in favor of the Appellants against enforcement of the repeal of Miss. Code Ann. § 37-7-611 should be stayed pending a decision by the District Court for the District of Columbia in an action for judicial preclearance filed by the State of Mississippi.

OPINION BELOW

The opinion of the District Court (App. A-1) is not yet reported.

JURISDICTION

The District Court issued an order granting a stay on July 30, 1996, and denied the Appellants' motion to vacate the stay on August 27, 1996. A notice of appeal was filed on August 27, 1996. App. D-1. The Court has jurisdiction pursuant to 42 U.S.C. § 1973c.

STATEMENT OF THE CASE

On June 10, 1996, after more than six years of litigation, the Court summarily affirmed the District Court's decision that the voting change effected by the repeal of Miss. Code Ann. § 37-7-611 was unenforceable because the State of Mississippi failed to comply with the Voting Rights Act. Dupree vs. Moore, 135 L. Ed. 2d 186 (1996). For decades, Mississippi law, as reflected in § 37-7-611, required that whenever a city annexed territory, the city school district's boundaries automatically expanded to include the territory annexed by its parent city. The State attempted to change this policy in 1986 by repealing § 37-7-611. As a result, residents in an area annexed by a city would remain residents of the county, or suburban, school district. This fundamental alteration of the long standing policy in Mississippi created an anomaly in voting. The newly annexed city residents would continue to elect directly the board members of their county, or suburban, school district, and at the same time indirectly select the board members of the city school district by participating in city council elections.[1]

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[1] The background of this case is detailed in the four decisions issued by the District Court:

(1) Dupree vs. Mabus, 776 F. Supp. 290 (S.D. Miss. 1991) (Dupree I), vacated sub. nom., Dupree vs. Moore, 503 U.S. 930 (1992);

A brief review of the procedural history of Dupree places the present appeal in context. In Dupree I, the District Court held that the repealer of § 37-7-611 had been properly submitted to and precleared by the Attorney General in 1986. 776 F. Supp. at 303. The Supreme Court vacated Dupree I and remanded for reconsideration in light of Clark vs. Roemer, 500 U.S. 646 (1991). 503 U.S. 930 (1992). On remand, in 1993, the District Court held that, when measured by the principles outlined in Clark vs. Roemer, 500 U.S. 646 (1991), the repeal of § 37-7-611 had not been precleared under § 5 of the Voting Rights Act because the State did not specifically identify the voting change effected by the repeal. Dupree vs. Moore, 831 F. Supp. 1310, 1317 (S.D. Miss. 1993) (Dupree II). Later, on remand for clarification of the remedy, the District Court explained that the scope of its injunction extended to both the explicit and implicit repeal of § 37-7-611. Dupree vs. Moore, H90-0043(W) (S.D. Miss., Dec. 29, 1995) (Dupree III). The Supreme Court summarily affirmed the District Court's decision on June 10, 1996. 135 L. Ed. 2d 186 (1996). On July 10, 1996, the Supreme Court issued its certified judgment.

On July 17, 1996, the State filed an "Emergency Motion for Stay" and requested that the District Court "enter its order staying the implementation of its decisions" that enjoined enforcement of the repeal of § 37-7-611. In

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(2) Dupree vs. Moore, 831 F. Supp. 1310 (S.D. Miss. 1993) (Dupree II), appeal dismissed, 127 L. Ed 2d 69 (1994), and vacated, 131 L. Ed. 2d 550 (1995);

(3) Dupree vs. Moore, No. H90-0043(W) (S.D. Miss., Dec. 29, 1995) (Dupree III), aff'd mem., 135 L. Ed. 2d 186 (1996); and

(4) Dupree vs. Moore, No. H90-0043(W) (S.D. Miss., Aug. 7, 1996) (Dupree IV), application to vacate stay denied, 65 U.S.L.W. 3204 (Sept. 6, 1996).

response to the Appellants' position that the District Court had no authority to stay the Supreme Court's judgment, the State in its rebuttal brief also asserted Fed. R. Civ. P. 60(b)(5) and (6) as bases for its motion.

On July 30, 1996, the District Court, with one judge dissenting, entered an order granting the stay and issued its opinion on August 7, 1996. Dupree vs. Moore, No. H90-0034(W) (S.D. Miss., Aug. 7, 1996) (Dupree IV). App. A-1; App. C-1. Although disavowing the need to determine the precise basis for granting relief, the District Court considered it "fundamental that our remedial powers permit our modifying or staying the implementation of such injunctive relief in light of subsequent developments." App. A-12. The Court quoted Landis vs. North Am. Co., 299 U.S. 248, 254 (1936): "The power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." The court also cited Fed. R. Civ. P. 60(b)(5) and (6) as alternative authority for its stay. App. A-12.

The court offered two reasons for the stay. First, after the Supreme Court issued its certified judgment, the State filed for judicial preclearance in the District of Columbia District Court. App. A-12.[2] In the light of that action, the District Court held it was "free to consider that change in circumstances in determining how our judgment should be implemented and whether implementation should be stayed pending a decision in that new action." App. 13. The State's decision to delay filing for judicial preclearance until it lost in Dupree was excused because "various cost and

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[2] The State's action for judicial preclerance is Mississippi vs. Reno, No. 1:96CV01711.

other most significant considerations impact on a State's selection" of its options. App. A-14. The State "[o]bviously could have" filed the judicial preclearance suit earlier but did not act in "bad faith" by choosing not to do so. App. A-14. In addition, "it is not appropriate to penalize the school districts in the State because the lawfully permitted strategic choices made by the State's Attorney General were not successful." App. A-14-15.

Second, the District Court granted a stay "to prevent the disruption that would occur if our rulings were implemented and the District of Columbia court later granted judgment for the State." App. A-15. If city school districts in Mississippi expand into annexed territory "currently under the control of the county school districts, and the State is successful in the District of Columbia, then questions such as the return of property to the county school districts will result in further disruptions." App. A-15. In addition, "when implementing our rulings, their impact on the non-voting aspects of the affected statutes must be considered." App. A-15. The District Court viewed it as "premature for us to undertake to resolve the complex issues involved in crafting a limited remedy for a § 5 violation ... until after a decision has been reached on the State's declaratory judgment action in the District of Columbia." App. A-16.

In dissent, Judge Wingate noted that the District Court lacked authority to stay its judgment after the Supreme Court affirmed the judgment. App. A-24. In addition, the State failed to present circumstances sufficient to support relief under Fed. R. Civ. P. 60(b)(5) and (6), and the court's inherent authority to control its docket did not apply to staying a final judgment affirmed by the Supreme Court. Finally, the majority's decision undermines § 5 of the Voting Rights Act. App. A-25-26.

> In addition to the plaintiffs, there is another victim here, § 5 itself. The majority's decision promises to undermine the directive and thrust of § 5. Section 5 relies upon the power of the injunction to prevent a covered state from imposing an unprecleared law upon its populous. Here, without benefit of any unexpected consequence befalling the State of Mississippi after the Supreme Court's ruling, the majority has decided to withhold its injunctive hand and, instead, politely wave at the defendants as they march by to another court and continue to operate as usual. Section 5 should stand for more. [App. A-27]

THE QUESTIONS ARE SUBSTANTIAL

The District Court lacked authority to stay its own judgment or the Supreme Court's judgment.

As the District Court noted, it did not precisely state the basis for its order. To the extent the court's order is a stay, it is contrary to two well-settled principles of jurisdiction. First, the power of a district court to issue a stay of its own judgment exists until the mandate of the appellate court issues. The power to grant a stay expired in this case when the Supreme Court issued its certified judgment on July 10, 1996. "[I]t is well settled that a court retains the power to grant injunctive relief to a party to preserve the status quo during the pendency of an appeal, even to this Court." Hawaii Housing Auth. vs. Midkiff, 463 U.S. 1323, 1324 (1983) (Rehnquist, C.J., in chambers). The District Court, however, stayed the judgment after the Supreme Court

issued its certified judgment. This holding creates a conflict with other courts.[3]

Second, a district court has no jurisdiction to stay the mandate of an appellate court. After an appellate mandate issues, any stay sought is of the appellate mandate, not the district court's judgment. Apparently for strategic reasons, the State chose not to file a petition for rehearing in the Court, not to seek a stay of the Court's judgment, and not to move the Court to recall its mandate. The District Court's stay of the Supreme Court's judgment was improper and in conflict with decisions of other courts.[4]

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[3] See Belyeu vs. Johnson, 82 F.3d 613, 615 (5th Cir. 1996) ("Whatever jurisdiction the district court may have had over matters 'in aid of the appeal' ended at least, when our mandate issued."); Rakovich vs. Wade, 834 F.2d 673, 674 (7th Cir. 1987) (district court's power to grant stay pending appeal exists "by virtue of its original jurisdiction over the case and continues to reside in the district court until such time as the court of appeals issues its mandate"); Brinkman vs. Department of Corrections, 857 F. Supp. 775, 777 (D. Kan. 1994) (citations omitted) (A "district court retains the authority throughout the pendency of the appeal to stay its judgment, but, upon issuance of the mandate, loses the power to stay the judgment."); Gander vs. FMC Corp., 733 F. Supp. 1346, 1347 (E.D. Mo. 1990) ("The power of a district court to grant a stay of judgment pending appeal terminates when the [appellate court] issues its mandate.").

[4] See In re Stumes, 681 F.2d 524, 525 (8th Cir. 1982); Brinkman, 857 F. Supp. at 777; Gander, 733 F. Supp. at 1347; United States vs. White, 1989 WL 515835, at *2 (W.D.N.Y. 1989); Mister vs. Illinois Central Gulf RR., 680 F. Supp. 297, 298 (S.D. Ill. 1988); Hovater vs. Equifax Servs., Inc., 669 F. Supp. 392, 393-94 (N.D. Ala. 1987); Deretich vs. City of St. Francis, 650 F. Supp. 645, 647 (D. Minn. 1986); Studiengesellschaft Kohle vs. Novamont Corp., 578 F. Supp. 78, 80 (S.D.N.Y. 1983); Kozman vs. TWA, 145 F. Supp. 140, 141 (S.D.N.Y. 1956); United States vs. Shaw, 115 F. Supp. 532, 532-33 (D.D.C. 1953). One court has suggested the question may be an open

The District Court's order conflicts with the court's interpretation of Fed. R. Civ. P. 60(b).

The Supreme Court's July 10, 1996, certified judgment "relates to the record and issues then before the court, and does not purport to deal with possible later events." Standard Oil Co. vs. United States, 429 U.S. 17, 18 (1976) (per curiam). The "later events" upon which the District Court relied here were the State's decision to seek judicial preclearance after it lost Dupree and the effect of § 37-7-611 on school districts in Mississippi. Relying on Fed. R. Civ. P. 60(b)(5) and (6), the District Court modified its injunction by staying its effect until the District of Columbia decides Mississippi vs. Reno.

Rule 60(b)(5) permits relief from a judgment when "it is no longer equitable that the judgment should have prospective application." The standard applicable to the District Court's modification of the injunction is presently unclear. The circuit courts of appeals are in conflict over whether the Court's decision in Rufo vs. Inmates of the Suffolk County Jail, 502 U.S. 367 (1992), which concerned modification of a consent decree in institutional reform litigation, governs any type of injunctive decree rather than United States vs. Swift & Co., 286 U.S. 106 (1932), which traditionally applied to modification of an injunction. Some circuits hold that Rufo is limited to institutional reform litigation.[5] Other

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one. Cementos Guadalajara vs. United States, 727 F. Supp. 614, 618 (C.I.T. 1989).

[5] See Lorain NAACP vs. Lorain Bd. of Educ., 979 F.2d 1141 (6th Cir. 1992)(en banc), cert. denied, 509 U.S. 905 (1993); W.L. Gore & Assocs., Inc. vs. C.R. Bard, Inc., 977 F.2d 558 (Fed. Cir. 1992).

circuits hold that Rufo applies to any injunction.[6] The circuits that consider Rufo to have a limited scope apply Swift.

Resolving the conflict is not critical to reversing the District Court's order. Under either standard, the District Court erred by granting relief under Rule 60(b)(5).

Rufo holds that modification of an injunction is proper only if there is "a significant change in circumstances." 502 U.S. at 383. But "modification should not be granted where a party relies upon events that actually were anticipated at the time" judgment was entered. Id. at 385. Here, neither basis for the District Court's order represents a "significant change" sufficient to support relief under Rule 60(b)(5).

Since its passage, the State has been fully aware of the effect of § 37-7-611 on school districts. In 1991, in its first pleading filed in the Supreme Court, the State referred to the "potential adverse effect of [§ 37-7-611] on county school districts surrounding municipal separate school districts." Dupree vs. Moore, No. 90-1977, J.S. p.3 n.1. In fact, the State characterized § 37-7-611 as providing "for the 'hostile takeover' of students and tax base as a result of a municipal annexation." (Id. p.3) The Appellees addressed repeatedly in the District Court the effect of § 37-7-611 -- reduction in tax base and loss of students -- that created in part the basis for the District Court's order. The State also referred to the effect of § 37-7-611 in its 1990 request to the

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[6] See Building and Constr. Trades Council vs. NLRB, 64 F.3d 880 (3d Cir. 1995); United States vs. Western Elec. Co., 46 F.3d 1198 (D.C. Cir. 1995); see also Valentine Sugars, Inc. vs. Sudan, 34 F.3d 320 (5th Cir. 1994).

Attorney General for reconsideration of the objection to § 37-7-611. Dupree, No. 95-1623 J.S. App. 236a. The State has always been aware of the effect of § 37-7-611 on Mississippi school districts.

Moreover, the effect of § 37-7-611 on school districts is no different in 1996 that it was in 1989, when the Attorney General first objected to the repeal of that statute, or in 1990, when he refused to withdraw the objection, or in 1993, when Dupree II was issued, or in 1995, when Dupree III was decided. Section 37-7-611's provision for automatic expansion of a city school district's boundaries has been the law in Mississippi since 1926. App. A-2. The State has fully understood the effect of § 37-7-611 on Mississippi school districts throughout Dupree and, as a result, relief under Rule 60(b) is unavailable.

The District Court's reliance on the filing of the District of Columbia action is also not a sufficient basis to grant relief under Rule 60(b)(5). Filing for judicial preclearance was an option available to the State at any point during the six years that Dupree has repeatedly traveled between the District Court and the Supreme Court. That option did not become available only after the Supreme Court affirmed the District Court's injunction. Rather, the State's decision to file, based on strategic considerations, is the new development. The District Court's interpretation of Rule 60(b)(5) allows the State to manipulate or create the "change in circumstances" upon which the State then uses as the justification for modification of the injunction. The "change in circumstances" was at all times under the control of the State.

The District Court accepts the State's admission that the decision not to file until it lost in Dupree was strategic.

But a party's deliberate decision to invoke or bypass a particular litigation option is not the "significant change in circumstances" required by Rufo. The District Court relied in part on the State's good faith pursuit of Dupree. A covered jurisdiction's "good faith implementation of a [voting] change" does not remove the potential for discrimination or excuse compliance with the Voting Rights Act. NAACP vs. Hampton County Election Comm'n, 470 U.S. 166, 180 (1985). A state's purported "good faith" choice of strategic litigation options is even less of a reason to permit enforcement of an unprecleared law.

The District Court's willing acceptance of the State's "strategic choices" argument is contrary to Hampton County in another respect. The Court responded to South Carolina's decision to delay submitting a statute for preclearance by noting that "[t]o the extent that appellees found themselves in a dilemma, however, it was largely of their own making." Id. at 180. The State of Mississippi could have filed the declaratory judgment action at any time since 1989, when the Attorney General first objected to the repeal of § 37-7-611. The consequences for the State's delay should not fall on the Plaintiffs, whose constitutional rights are being violated.

Rufo also holds that the modification "must not create or perpetuate a constitutional violation." 502 U.S. at 391 (emphasis added). The District Court's order perpetuates a constitutional violation. By staying its injunction, the District Court allows the State to enforce the repeal of § 37-7-611, despite a unanimous Supreme Court decision that the law was not precleared and despite a finding by the Attorney General that the law is racially discriminatory. The District Court's decision is contrary to Rufo.

The District Court's stay order is also inconsistent with Swift, which holds that "[n]othing less than a clear showing of grievous wrong evoked by new and unforeseen conditions" can support modification. 286 U.S. at 119. Swift teaches that the proper inquiry is "whether the changes are so important that dangers, once substantial, have become attenuated to a shadow." Id. In other words, has the need for an injunction to force the State to comply with the Voting Rights Act been reduced "to a shadow". Swift requires a significant showing to support modification.

> [M]odification is only cautiously to be granted; that some change is not enough; that the dangers which the decree was meant to foreclose must almost have disappeared; that hardship and oppression, extreme and unexpected, are significant; and that the movants' task is to provide close to an unanswerable case. To repeat: caution, substantial change, unforeseeness, oppressive hardship, and a clear showing are the requirements.

Humble Oil & Refining Co. vs. American Oil Co., 405 F.2d 803, 813 (8th Cir.) (Blackmun, J.), cert. denied, 395 U.S. 905 (1969). Neither the effect of § 37-7-611, known for so long by the State, nor the State's tactical decision to file in the District of Columbia, after bypassing that option for more than six years, rises to the level of the "grievous wrong evoked by new and unforeseen conditions" required by Swift.

Rule 60(b)(6) permits a district court to grant relief from a final judgment for reasons other than those listed in clauses (1)-(5). This subdivision applies only in "extraordinary circumstances." Liljeberg vs. Health Services Acquisi-

tion Corp., 486 U.S. 847, 864 (1988). A "strict interpretation of Rule 60(b) is essential if the finality of judgments is to be preserved." Id. at 873 (Rehnquist, C.J., dissenting).

The strategic choice made here by the State to delay filing suit in the District of Columbia is not an appropriate basis upon which to grant relief under Rule 60(b)(6). The District Court's reliance on Rule 60(b)(6) is inconsistent with Ackermann vs. United States, 340 U.S. 193 (1950). There, Ackermann chose not to appeal a denaturalization order because of, among other things, cost considerations. Id. at 195. "His choice [not to appeal] was a risk but calculated and deliberate"; as a result, relief was not available under Rule 60(b)(6). In language directly applicable to the State's strategic choice to delay filing suit in the District of Columbia, the Court stated: "There must be an end to litigation someday, and free, calculated, deliberate choices are not to be relieved from." Id. at 198.[7] The key factor is that the State of Mississippi made a conscious and deliberate choice not to file the § 5 action until it lost Dupree. See Lubben vs. Selective Serv. Sys., 453 F.2d 645, 652 (1st Cir. 1972) ("We do not speculate on the reasons why the government did not pursue its direct attack on the Lubben injunction; it is sufficient that the decision to do so was one of unfettered

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[7] The State's judicial preclearance action in the District of Columbia is to an extent an "appeal" of the Attorney General's decision not to grant preclearance of the repeal of § 37-7-611. The State's decision not to appeal until it lost in Dupree is similar to Ackermann's decision not to appeal in that it was "the voluntary, deliberate, free, untrammeled choice of" both parties not to invoke an option available to them. See C. Wright, et. al, Federal Practice and Procedure § 2864, at p.359 (1995) ("Thus, the broad power granted by clause (6) is not for the purpose of relieving a party from free, calculated, and deliberate choices he has made").

choice and free will. Having made that choice, the government must now live with its decision.").[8]

The District Court's order is contrary to the Supreme Court's summary affirmance.

The District Court concluded that its stay "does not have the effect of staying the Supreme Court's mandate" because "the Court did not address what remedy was appropriate for implementing and enforcing" the District Court's judgment. App. A-12-13. That holding is incorrect because it overlooks the effect of the Court's summary affirmance. As a result, the District Court's order deviates from the certified judgment of the Supreme Court.

In a § 5 preclearance action, the District Court addresses three issues: (i) whether the voting change is subject to § 5, (ii) if so, whether § 5's requirements were met and (iii) if the requirements were not met, what is the appropriate remedy. McCain vs. Lybrand, 465 U.S. 236, 250 n.17 (1984). Dupree I held that the repeal of § 37-7-611 was subject to § 5. Dupree II held that the State failed to comply with § 5's requirements and issued an injunction precluding the State from enforcing the repeal of § 37-7-611.

The Supreme Court has specifically addressed the remedy issue in two orders. First, this Court invited the Solicitor General to address the question of what remedy, if any, was appropriate in the light of the Mississippi Supreme

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[8] Throughout this case, the State offered various remedies for the District Court to impose based on the violation of § 5. But the State did not request that the District Court delay implementation of the injunction issued in Dupree II. Rule 60(b) cannot be invoked as a substitute for an appeal of the remedy. See Wright, supra n.14, § 2863, at p.340.

Court's decision that § 37-7-611 was implicitly repealed by another section of the Uniform School Law (§ 52). 130 L. Ed 2d 308 (1994).[9] After receiving the Solicitor General's brief, which recommended a remand to address the severability of the voting and nonvoting aspects of enjoining the repeal of § 37-7-611, this Court remanded with directions for the District Court to clarify whether its remedy included, in addition to an injunction against the explicit repeal of § 37-7-611, an injunction against § 52 of the USL insofar as it implicitly repealed § 37-7-611. 131 L. Ed. 2d 550 (1995). On remand in Dupree III, the District Court clarified its remedy by holding that both the explicit and implicit repeal of § 37-7-611 were enjoined.

Thus, the District Court considered each of the three questions raised in a § 5 preclearance action. By issuing an injunction, which is the typical relief granted when a covered jurisdiction fails to comply with § 5, the District Court applied settled principles. See infra p.20. The District Court necessarily reached and decided the remedy issue. The numerous motions filed by the Appellees directed to altering or amending the District Court's remedy are detailed in that court's opinion. App. A-8-11. The Court's summary affirmance laid the remedy issue to rest in Dupree and the issue is not open to reconsideration.

In Mandel vs. Bradley, 432 U.S. 173 (1977) (per curiam), the Court held that summary affirmances "without doubt reject the specific challenges presented in the statement of jurisdiction," govern the "precise issues presented and necessarily decided," and "should not be understood as breaking new ground but as applying principles established

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[9] See Greenville Pub. Sch. Dist. vs. Western Line Consol. Sch. Dist., 575 So. 2d 956 (Miss. 1990), cert. denied, 503 U.S. 950 (1992).

by prior decisions to the particular facts involved." Id. at 176. A summary affirmance is a ruling on the merits "in the sense that [it] reject[s] the 'specific challenges presented in the statement of jurisdiction.'" Washington vs. Confederated Bands and Tribes, 439 U.S. 463, 478 n.20 (1979) (quoting Mandel). The issues presented in the statement of jurisdiction are, therefore, important in determining the effect of a summary affirmance. See Anderson vs. Celebrezze, 460 U.S. 780, 784 n.5 (1983) (citing jurisdictional statements in determining whether summary affirmance was controlling). "Questions which merely lurk in the record are not resolved, and no resolution of them may be inferred." Illinois State Bd. of Elections vs. Socialist Workers Party, 440 U.S. 173, 183 (1979). By no stretch of the imagination could the remedy issue be viewed as merely lurking in the record. The remedy issue was the central focus of this litigation after August 1993, when the District Court issued Dupree II.

The remedy issue was squarely raised by the jurisdictional statements in Dupree. The jurisdictional statement filed by the State and the Forrest County School District presented these two questions:

> 3. Whether the district court was correct in denying the joint motions of Defendants and Defendants/Intervenors for new trial, to alter or amend judgment and/or for a remedy, which were filed after the district court's decisions on the first and second remands?
>
> 4. After finding that the enactments at issue (§ 47 and § 52 of the Mississippi Uniform School Law of 1986) were not precleared, to what extent does the district court have a duty to fashion a voting remedy?

Dupree, J.S. No. 95-1623. The Lamar County School District's jurisdictional statement contained these two questions:

> 4. Did the three-judge district court err in construing its duties under § 5 of the Voting Rights Act when it refused to accept evidence and address a remedy that would affect voting?
>
> 9. Whether the remedy for failure of preclearance is one that affects voting as opposed to ceding geographic territory, students, tax bases and tax revenues to adjoining urban school districts?

Dupree, J.S. No. 95-1624.

In addition to these questions, the body of the Appellees' jurisdictional statements dealt at length with the remedy issue. The State contended that the injunction issued by the District Court was not "a specific remedy outlining the relief to which the Plaintiffs were entitled." Dupree, No. 95-1623, J.S. p.24. In addition, the State alleged that the remedy caused "chaos" and "massive confusion within the educational system of Mississippi." Id. p.25. The State asserted that the District Court failed to carry out its obligation to "fashion a specific voting remedy" that was "equitable and practicable." Id. p.26 (citing McCain vs. Lybrand and Clark vs. Roemer). The concluding two pages of the State's jurisdictional statement removes any doubt that the remedy issue was specifically presented to the Court on appeal.

> At every turn, the district court failed to meet the third requirement set forth in McCain vs. Lybrand, that of determining the appropriate relief. It is not sufficient to enjoin enforcement of both voting and non-voting aspects of sweeping provisions of a comprehensive legislative act. The court should have heard evidence and then should have adopted a more limited remedy which would wreak as little havoc with the nonvoting aspects of the Mississippi Uniform School Law as possible.

Dupree, No. 95-1623 J.S. p.27. The State then argued that the appropriate remedy in this case should have been limited to "a voting remedy." Id.

The Lamar County jurisdictional statement noted that the post-judgment motions filed after Dupree II and Dupree III questioned whether the District Court's remedy "would affect voting in the school district elections and/or geographic territory by ordering the Hattiesburg School District boundaries moved to the city's urban limits, thereby absorbing students, tax base, and tax revenues." No. 95-1624 J.S., pp.6-7. A section of Lamar County's jurisdictional statement is titled "A § 5 Decision Must Address The Remedy To Be Imposed" and is devoted solely to the remedy issue. Id. pp.14-16. Later, Lamar County notes a purported conflict regarding "the scope of the remedial powers of a three-judge district court in a § 5 voting rights case" and questions whether the District Court had authority "under § 5 to carve up the Lamar County School District." Id. p.21.

In the light of the issues presented and the arguments made by the Appellees in Dupree, the District Court's holding that the remedy issue remains undecided is clearly wrong. The District Court's stay, therefore, "flout[s] the mandate" of the Supreme Court. See Standard Oil Co. vs. United States, 429 U.S. 17, 18 (1976) (per curiam). The Court's "mandate" (the certified judgment) affirmed the injunction granted by the District Court, which in turn "has no power or authority to deviate from the mandate." Briggs vs. Pennsylvania R. Co., 334 U.S. 304, 306 (1948); see FCC vs. Pottsville Broadcasting Co., 309 U.S. 134, 140 (1940); In re Sanford Fork & Tool Co., 160 U.S. 247, 255 (1895).[10]

The District Court's order undermines the Voting Rights Act.

By permitting an indisputably unprecleared law to be enforced, the District Court's decision undermines the purpose of § 5. "In order to prevent changes that have a discriminatory purpose or effect, § 5 requires covered jurisdictions ... to obtain preclearance by one of two

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[10] The District Court's reliance on Landis vs. North Am. Co., 299 U.S. 248 (1936), is misplaced. There, the existence of another action implicating the same issues convinced the district court to grant a stay, which was issued before the defendants even filed their answers. Id. at 250. The type of stay authorized by Landis exists to avoid duplicative litigation. See Coit Independence Joint Venture vs. FSLIC, 489 U.S. 561, 585 (1989); Moses H. Cone Mem. Hosp. vs. Mercury Constr. Corp., 460 U.S. 1, 20 n.23 (1983); Will vs. Calvert Fire Ins. Co., 437 U.S. 655, 663 (1978); Colorado River Water Conservation Dist. vs. United States, 424 U.S. 800, 817 (1976). The authority to control its docket cannot be equated, as the District Court did here, with authority to grant relief from a final judgment after it was affirmed by the Supreme Court.

methods before implementing new voting practices." Clark vs. Roemer, 500 U.S. 646, 648 (1991); see NAACP vs. Hampton County Election Comm'n, 470 U.S. 166, 175 n.19 (1985) ("Generally, statutes that are subject to § 5 are ineffective as laws until they have been cleared by federal authorities."); Connor vs. Waller, 421 U.S. 656, 656 (1975) ("Those Acts are not now and will not be effective as laws until and unless cleared pursuant to § 5.").

The District Court's error is compounded by the additional factor that the Attorney General objected to the law because it is discriminatory. If a covered jurisdiction violates the Act, as Mississippi did here by failing to obtain preclearance, "§ 5's prohibition against implementation of unprecleared changes required the District Court to enjoin the" change from being carried out. Clark, 500 U.S. at 654 (emphasis added). The District Court's stay ignores these principles.

The District Court enjoined enforcement of the repeal of § 37-7-611 until the State complies with the preclearance requirements of the Voting Rights Act. This remedy is entirely consistent with the remedy either affirmed or mandated by the Court in prior § 5 cases. "If voting changes subject to § 5 have not been precleared, § 5 plaintiffs are entitled to an injunction prohibiting the State from implementing the changes." Clark vs. Roemer, 500 U.S. at 652-53; see also Dougherty County Bd. of Educ. vs. White, 439 U.S. 32, 36 (1978); Berry vs. Doles, 438 U.S. 190, 191 (1978) (per curiam); Georgia vs. United States, 411 U.S. 526, 541 (1973); Perkins vs. Matthews, 400 U.S. 379, 397 (1971); Allen vs. State Bd. of Elections, 393 U.S. 544, 572 (1969).

By virtue of the stay, the State is excused from the injunction for the near future and can enforce a law the Attorney General found to be discriminatory. The District Court suggests that because the impact of the repeal of § 37-7-611 on voting is minimal in comparison to the effect on nonvoting concerns, such as tax base and student attendance, the ordinary remedy of an injunction for a § 5 violation may be inappropriate. But that reasoning would apply in any Voting Rights Act case. For example, whether a particular election for the governing board of a county or city should be set aside could have far-reaching ramifications unrelated to voting. Deciding to reject a state's redistricting plan for congressional districts or its own legislature could have a profound effect on public policy issues that have no relation to voting. The District Court's holding that an unprecleared law found by the Attorney General to be discriminatory should be enforced because nonvoting concerns are considered paramount is a perverse interpretation of the Act and in fact subverts the objective of the Act.

The District Court order's also undermines the Voting Rights Act by sanctioning retroactive preclearance in circumstances that do not support that concept. The District Court essentially held that, if the District of Columbia District Court grants preclearance, the repealer of § 37-7-611 will be retroactively precleared. App. A-15. This holding misapprehends the nature and effect of after-the-fact preclearance. This concept applies only in the remedy phase of a § 5 preclearance action like Dupree, not in the context of a declaratory judgment action in the D.C. District Court. The two Supreme Court cases that address "retroactive preclearance" demonstrate that judicial preclearance of the repeal of § 37-7-611 will not apply retroactively.

In Berry vs. Doles, 438 U.S. 190 (1978) (per curiam), the Court entered an order directing the district court to require the state to submit a voting change for preclearance within 30 days. "If approval is obtained, the matter will be at an end. If approval is denied, [the § 5 plaintiffs] are free to renew" their request for a remedy in the district court. Id. at 192-93. Berry confirms that after-the-fact preclearance is a matter for the district court to consider in determining the appropriate remedy for a violation of § 5. See id. at 190 ("This appeal presents a challenge to the scope of the remedy allowed" under § 5.); id. at 192 ("In [an earlier case], we had occasion to address the remedy issue which now confronts us.").

More recently, the Court carefully avoided approving the concept of "retroactive preclearance," noting that a district court's reliance on Berry as authority for the express adoption of the concept may not have been a "fair characterization of the holding of Berry." NAACP vs. Hampton County Election Comm'n, 470 U.S. 166, 182 (1985). In Hampton County the voting changes in issue had never been submitted to the Attorney General. Id. at 182. As in Berry, the Court directed the district court to enter an order allowing the state 30 days in which to submit the changes to the Attorney General for approval. "If [the State] fail[s] to seek this approval, or if approval is not forthcoming, the results of the ... election should be set aside. If, however, the Attorney General determines that the changes had no discriminatory purpose or effect, the District Court should determine, in the exercise of its equitable discretion, whether the results of the election may stand." Id. at 182-83.

If the concept of retroactive preclearance applies as a matter of course, as the District Court suggests, the district court in Hampton County would not have had authority to

set aside the election after the voting changes were precleared by the Attorney General. This holding also confirms that after-the-fact preclearance is a consideration for the District Court in determining the proper remedy for a state's failure to comply with the Voting Rights Act.

There are two material differences between Dupree and Berry and Hampton County. First, in Dupree, the Attorney General objected to the repeal of § 37-7-611. The Attorney General never considered the voting changes in Berry and Hampton County.

Second, both the District Court and the Supreme Court considered the appropriate remedy in Dupree and, in fact, dealt with this issue at length. In Berry, the district court "had reached the question of an appropriate remedy," and, therefore, if after-the-fact approval of the voting change was given, "the matter would be at an end." See Hampton County, 470 U.S. at 183 n.36. In other words, the district court in Berry had already decided that the appropriate remedy would be to allow the election to stand. In Hampton County, the district court never reached the remedy phase and, therefore, "never engaged in the equitable weighing process necessary to determine" the remedy for a violation of § 5. Id.[11]

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[11] The two district court cases that address "after-the-fact" preclearance also confirm its limited application to the remedy phase of a § 5 preclearance action. See Moore vs. Caledonia Natural Gas Dist., 890 F. Supp. 547, 551 (N.D. Miss. 1995) (single district judge dismissed § 5 claims in part because "there is no relief that a three-judge court could grant"); East Flatbush Election Committee vs. Cuomo, 643 F. Supp. 260, 264 (E.D.N.Y. 1986) (three-judge court) (district court declined to set aside election when preclearance obtained shortly after election).

CONCLUSION

For these reasons, Appellants respectfully request that the Court note probable jurisdiction.

Dated: October 25, 1996.

Respectfully submitted,
JOHNNY DUPREE et. al

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APPENDICES

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION

JOHNNY DUPREE, *et al.* **PLAINTIFFS**

v.

MIKE MOORE, Attorney General of Mississippi, in His Official Capacity, and THE STATE OF MISSISSIPPI **DEFENDANTS**

and

THE LAMAR COUNTY BOARD OF EDUCATION and TRUSTEES, *et al.* **DEFENDANTS/INTERVENORS**

and

FORREST COUNTY SCHOOL DISTRICT, *et al.* **DEFENDANTS/INTERVENORS**

CIVIL ACTION NO. 1190-0043(W)

Before BARKSDALE, Circuit Judge, and LEE and WINGATE, District Judges.

RHESA HAWKINS BARKSDALE, Circuit Judge:

The landscape is figuratively (and almost literally) littered with opinions and other papers spawned by this seemingly interminable, and certainly most regrettable, Voting Rights Act litigation filed in early 1990 concerning the Mississippi Uniform School Law enacted in 1986. This action has just completed its third round trip to the Supreme Court; perhaps the State's newly filed declaratory judgment action, brought under the Voting Rights Act in the District of Columbia, will assist the conclusion of this litigation.

Toward that end, as well as for other reasons, on July 30, 1996, this 42 U.S.C. § 1973c and 28 U S.C. § 2284 Voting Rights Act three-judge court (Wingate, J., dissenting) granted the "State Defendants' Emergency Motion for Stay". As indicated in that order, we detail here our reasons for doing so. In order to understand where we are, why we are here, what we have now done, and why we are doing it, it is necessary to retrace in considerable detail our many labored steps along this long and winding road to the schoolhouse.

I.

Prior to 1986, MISS. CODE ANN. § 37-7-611, enacted in 1926, provided that, upon a municipal annexation, the municipal school district would expand automatically with the city limits. In 1977, the Mississippi Legislature created an exception to § 37-7-611, by amending MISS. CODE ANN. § 21-1-59 to provide that such annexation across a county line would not affect the school district in the annexed area unless such school district consented to the annexed territory being included in the school district of the

annexing municipality. Ch. 379, 1977 Miss. Laws 543. Section 21-1-59 was amended again in 1978 to make it applicable to future annexations into a neighboring county. Ch. 312, 1978 Miss. Laws 418.

The Mississippi Legislature enacted the Uniform School Law in 1986. Section 47 of that Law, Ch. 492, 1986 Miss. Laws 687, repealed § 37-7-611. And, § 52 of that Law amended § 37-7-103 (which had concerned changes to school. districts by a county board of education); all references to a county board of education and its authority to alter districts in the county, and all references to a municipal school district and its required consent, were deleted.

Pursuant to § 52, the school board of any school district can alter its boundaries by obtaining the consent of the adjoining school district involved; the school board may "add to such school district any part of the school district adjoining same, and ... detach territory from such school district and annex same to an adjoining district". MISS. CODE ANN. § 37-7-103. (As discussed infra, in *Greenville Public School District v. Western Line Consolidated School District*, 575 So. 2d 956 (Miss. 1990), *cert. denied*, 503 U.S. 950 (1992), the Mississippi Supreme Court held that § 52 (§ 37-7-103) implicitly repealed § 37-7-611. As also discussed *infra*, this implicit repeal has been a sticking point in this litigation.)

As explained in 1991 in our first opinion, § 37-7-103, as amended by § 52, was, in effect, a replacement for school distracting procedures. Section 52 created uniformity among school districts with respect to the laws governing school district boundaries and alterations. *See Dupree v. Mabus*, 776 F. Supp. 290, 302 (S.D. Miss. 1991).

The 1977 and 1978 amendments to § 21-1-59, and the repeal of 37-7-611 (*explicitly* by § 47, and *implicitly* by § 52, of the Uniform School Law) had the same effect: municipal school districts no longer automatically expanded with municipal annexations. This created a class of municipal voters who do not reside in the city school system, but who do vote for the city governing authorities who, in turn, select the city's school board.

Annexations by the City of Hattiesburg (City) in Forrest and Lamar Counties were affected by these changes; although the citizens in the annexed areas vote in City municipal elections, the City's school district has not expanded with those annexations.

In 1986, pursuant to § 5 of the Voting Rights Act, 42 U.S.C. § 1973c, the Mississippi Attorney General submitted the Uniform School Law for preclearance. The cover letter explained 13 sections and their effect on voting; but, unfortunately, the repeal of § 37-7-611 was not one of those discussed. By latter dated August 29, 1986, the United States Attorney General advised the Mississippi Attorney General that he did not object to the voting changes identified in the cover letter.

Because that letter raised doubts whether the preclearance included provisions other than those 13 specifically listed in the State's cover letter, the Mississippi Attorney General in December 1987 sought affirmative preclearance of § 47 insofar as it repealed § 37-7-611. In February 1988, the United States Attorney General requested additional information concerning the repeal of § 37-7611; and, after the State responded, the United States Attorney General objected in March 1989 to the implementation of § 47 insofar as it repealed § 37-7-611. The State requested

reconsideration; in May 1990, the United States Attorney General declined to withdraw his objection.

In February 1990, while the State was awaiting this May 1990 decision by the United States Attorney General, the plaintiffs (residents and registered voters in the City and Forrest County and members of the Board of Trustees of the Hattiesburg Public School District) filed this action under § 5 of the Voting Flights Act, 42 U.S.C. § 1973c, seeking to enjoin the State of Mississippi and state officials from enforcing the 1977 and 1978 amendments to § 21-1-59, and § 47 of the Uniform School Law, which expressly repealed § 37-7-611. The Lamar and Forrest County Boards of Education and the members of their Boards of Trustees intervened as defendants.

The plaintiffs claimed (1) that the challenged statutes resulted in a change in voting covered by § 5, because the votes of the City voters who also reside in the City's school district would be diluted by those of the annexed area residents, who remain a part of the county school district, but who vote for the City officials who in turn select the members of the City school board; and (2) that the statutes were unenforceable because they had not been precleared pursuant to § 5.

The plaintiffs did not seek to enjoin § 52 of the Uniform School Law, which, as discussed, amended § 37-7-103 and implicitly repealed § 37-7-611. Accordingly, following oral argument in September 1990, we requested supplemental briefs on the effect of § 52. And, the parties filed additional briefs after the Mississippi Supreme Court's above-referenced opinion in *Greenville Public School District* concerning that section.

In our earlier referenced 1991 opinion, rendered that April, we held, *inter alia*, that the repeal of § 37-7-611 by § 47 of the Uniform School Law had been precleared, because it was submitted to the United States Attorney General together with the entire Uniform School Law; but, we held also that the amendments to § 21-1-59 had not been precleared and were, therefore, unenforceable. *Dupree v. Mabus*, 776 F. Supp. 290 (S.D. Miss. 1991). Because we held that the express repeal of § 37-7-611 by § 47 of the Uniform School Law was precleared, we did not address whether the repeal of § 37-7-611 was precleared also by the undisputed preclearance of § 52 of that Law (§ 37-7-103). 776 F. Supp. at 303 n.7. The plaintiffs appealed the holding on the repeal of § 37-7-611; the defendants did not cross-appeal our holding that the amendments to § 21-1-59 had not been precleared.

Two months after our decision, the United States Supreme Court held in *Clark v. Roemer*, 500 U.S. 646 (1991), that a State must "identify with specificity each change that it wishes the Attorney General to consider" in a § 5 submission, *id.* at 658, and reiterated that "any ambiguity in the scope of a preclearance request must be resolved against the submitting authority". *Id.* at 656. In March 1992, the Supreme Court vacated our judgment and remanded the case for further consideration in light of *Clark v. Roemer*. *Dupree v. Moore*, 503 U.S. 930 (1992).

Following remand, we directed the parties and the United States, *amicus curiae* aligned with the plaintiffs, to submit supplemental briefs. In those briefs, additional issues were raised, including the proper remedy for any § 5 violation.

In August 1993, this court (Barksdale, J., dissenting) addressed only "the *narrow* issue ... [of] whether the State ... identified the repealer of § 37-7-611 [§ 47 of the Uniform School Law] unambiguously and with the specificity required to constitute a proper submission of the matter to the United States Attorney General for preclearance". *Dupree v. Moore*, 831 F. Supp. 1310, 1313 (S.D. Miss. 1993) (emphasis added). The majority held that, when Mississippi submitted for preclearance the comprehensive Uniform School Law of 1986, of which the repealer of § 37-7-611 (§ 47) was a part, it did not identify with specificity the anticipated voting changes resulting from the repealer and, therefore, had not complied with the standard required by *Clark v. Roemer*. *Id.* at 1317.

The majority stated also that, even if § 52 of the Uniform School Law (§ 37-7-103), which had been precleared by the United States Attorney General, amounted to a repeal of § 37-7-611 by operation of state law, "that fact was not submitted to the Attorney General in 1986 nor reviewed by him as such". *Id.* Accordingly, the majority did not find persuasive the Mississippi Supreme Court's above-described holding in *Greenville Public School District* that the Attorney General had in effect precleared the repeal of § 37-7-611 by preclearing § 52 of the Uniform School Act. *Id.* at 1317 n.9. The majority concluded that the repeal of § 37-7611 by § 47 of the Uniform School Law was ineffective and unenforceable unless and until the State of Mississippi gets either the United States Attorney General to preclear the repealer, or to withdraw his objection, *or the State of Mississippi obtains a declaratory judgment from the District of Columbia District Court stating that the repealer has no discriminatory effect Upon voting rights in Mississippi*". *Id.* at 1318 (emphasis added).

The defendants and intervenors moved to alter or amend, asserting, inter alia, that we should enter findings of fact and conclusions of law on [t]he appropriate remedy, and the practical implications" of the holding that § 47, which *expressly* repealed § 37-7-611, had not been precleared, in light of the fact that § 52, which *implicitly* repealed § 37-7-611, had been precleared. They also filed a "Joint Motion for Remedy", asserting, *inter alia*, that a trial was necessary for resolving the remaining issues, including whether the remedy was to be limited to a voting remedy, pursuant to which the school district boundaries would remain where they are, and the citizens in the annexed areas of Lamar and Forrest Counties would remain as residents of the county school district, but not be allowed to vote for members of the county school boards, and whether § 52 of the Uniform School Law, which implicitly repealed § 37-7-611, granted the remedy they sought.

In addition, the defendants and intervenors moved for a stay pending appeal to the Supreme Court. In October 1993, this court denied the stay; we withheld ruling on the motions to alter or amend and the joint motion for a remedy "until such time as the Supreme Court of the United States has reached its conclusion with regard to the matter now on appeal".

In January 1994, the Supreme Court dismissed for want of jurisdiction the defendants' and intervenors' interlocutory appeals. *Moore v. Dupree*, 510 U.S. 1068 (1994); *Lamar County Bd. of Educ. & Trustees v. Dupree*, ___ U.S. ___, 114 S. Ct. 872 (1994). That April, we denied the defendants' motions to alter or amend, and/or for a remedy. The defendants and intervenors appealed immediately to the Supreme Court.

The Supreme Court invited the Solicitor General to brief the following question on behalf of the United States, as *amicus curiae*:

> In light of the Mississippi Supreme Court's holding in *Greenville Public School District v. Western Line Consolidated School District*, 575 So.2d 956 (Miss.1991), that Miss. Code Ann. § 37-7-103 (1972 & Supp. 1990) [§ 52 of the Uniform School Law] supersedes Miss. Code Ann. § 37-7-611 (1972) and repeals it by implication, what *remedy*, if any, can a federal court offer for failure to preclear section 47 of the [Uniform School Law], which also purported to repeal § 37-7-611?

Moore v. Dupree, ___ U.S. ___, 115 S. Ct. 352, 353 (1994) (emphasis added); *Lamar County Bd. of Educ. & Trustees v. Dupree*, ___ U.S. ___, 115 S. Ct. 353 (1994). In response, the United States advanced the position that *Greenville Public School District* has no effect on the remedy that a federal court may order in this case, and urged that § 37-7-103 (§ 52) be enjoined. The United States asserted, however, that nonvoting consequences (on school attendance and taxes, etc.) of an injunction prohibiting enforcement of § 52's implicit repeal of § 37-7-611 "create a *significant remedial issue* that ... warrants a remind to the district court for further proceedings". (Emphasis added.)

In April 1995, the Supreme Court vacated our judgment and remanded this case for clarification of whether we had enjoined only § 47 of the Uniform School Law, or whether we had enjoined also the effect of § 52 of that Law, insofar as § 52 implicitly repealed § 37-7-611. *Moore v. Dupree*, ___ U.S. ___, 115 S. Ct. 1684 (1995); *Lamar County Bd. of Educ. & Trustees v. Dupree*, U.S. 115 S. Ct.

1684 (1995). We directed the parties to file briefs, and also allowed the United States, as *amicus curiae*, to do so.

The defendants and intervenors urged that, if we enjoined § 52, we should adopt a remedy limited to voting matters only, leaving intact the non-voting aspects of § 52. The plaintiffs asserted that the remedy proposed by the intervenors is unconstitutional, because it would result in newly annexed city residents being precluded from voting in county school board elections, even though they reside in that district, send their children to county schools, and pay taxes to support the county schools in amounts determined by the county school boards. The United States asserted that, in addition to addressing whether the implicit repeal of § 37-7-611 by § 52 of the Uniform School Law had been precleared, we "should determine [also] whether the non-voting aspect of the change effected by the repeal of [§] 37-7-611 is, as a matter of state law, severable from the voting change effected by the repeal, which in turn will determine the scope of the declaratory judgment and injunction to which plaintiffs are entitled".

In December 1995, this court (Barksdale, J., specially concurring) enjoined enforcement of § 52 of the Uniform School Law, even though it had been precleared by the United States Attorney General, because to permit otherwise would frustrate the previous order enjoining § 47 of that Law. *Dupree v. Moore*, No. H90-0043(W) (S.D. Miss. Dec. 29, 1995) (unpublished). A final judgment was entered in early January 1996.

The defendants and intervenors moved to alter or amend, asserting that there were practical problems as to when the changes resulting from our judgment were to be implemented, seeking limitation of the remedy to an injunc-

tion affecting only voting, and requesting an evidentiary hearing as to the impact and parameters of the remedy on taxes and bond issues in the affected school districts. They also sought a stay pending appeal to the Supreme Court. The plaintiffs responded that issues concerning tax base and where students would attend school would be resolved in a separate, pending desegregation action.

In February 1996, we denied the motion to alter or amend. But, we granted the motion for stay pending appeal. The Supreme Court affirmed this June. *Moore v. Dupree*, ___ U.S. ___, 116 S. Ct. 2493 (1996); *Lamar County Bd. of Educ. Trustees v. Dupree*, ___ U.S. ___, 116 S. Ct. 2493 (1996). On July 17, the defendants filed the emergency motion at hand for a stay of our August 1993 and December 1995 rulings, asserting that their implementation prior to the start of school on August 12 would cause irreparable harm to children in school districts throughout the State. The motion advised that, pursuant to § 5 of the Voting Rights Act, 42 U.S.C. 1973c, the State had instituted a declaratory judgment action in the District Court for the District of Columbia, seeking approval of the repeal of § 37-7-611. The intervenors joined the State in seeking a stay. After expedited briefing, we granted the emergency motion on July 30.

II.

A.

We address first our power to grant the stay in light of the Supreme Court's affirmance of our judgment. In opposing the emergency motion, the plaintiffs asserted that, because the State had not relied expressly on FED. R. CIV. P. 60(b), which plaintiffs contend is the sole basis for

granting the relief, we lacked the power to grant a stay. The defendants replied that they sought relief under, inter alia, FED. R. CIV. P. 60(b).

We need not determine the precise basis for our granting relief; it is clearly within our power. As noted, this court declared that the repeal of MISS. CODE ANN. § 37-7-611 by §§ 47 and 52 of the Uniform School Law was ineffective, and enjoined its enforcement unless and until the State obtained preclearance from either the United States Attorney General or approval by the District Court for the District of Columbia.

It is fundamental that our remedial powers permit our modifying or staying the implementation of such injunctive relief in light of subsequent developments. See *Landis v. North American Co.*, 299 U.S. 248, 254-56 (1936) ("the power to stay proceedings is incidental to the power inherent in every court control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants").

Alternatively, based on the State's seeking a declaratory judgment in the District of Columbia, relief would be appropriate under Rule 60(b)(5), authorizing relief from a judgment when "it is no longer equitable that the judgment should have prospective application", or 60(b)(6), which provides that a court "may relieve a party ... from a final judgment ... [for] any other reason justifying relief from the operation of the judgment".

Contrary to the plaintiffs' assertion, this stay, pending a decision by the District Court for the District of Columbia, does not have the effect of staying the Supreme Court's mandate. In affirming our judgment, the Court did not

address what remedy was appropriate for implementing and enforcing it. Moreover, in prior Voting Rights Act cases, the Court has indicated that the choice of an appropriate remedy for a § 5 violation should be made by the district court. See *Perkins v. Matthews*, 400 U.S. 379, 396-97 (1971) (refusing to set aside election conducted under unprecleared law and stating that, "[s]ince the District Court is more familiar with the nuances of the local situation than we are, and has heard the evidence in this case, we think the question of the appropriate remedy is for that court to determine, in the first instance, after hearing the views of both parties"), *Clark v. Roemer*, 500 U.S. at 659-60 (refusing to set aside judicial elections and stating that the district court is in a better position to fashion relief, because it is more familiar with the nuances of the local situation).

In sum, the State sought the declaratory judgment, as it was entitled -- *and, in essence, had been invited by this court* -- to do after the Supreme Court's decision. We are free to consider that change in circumstances in determining how our judgment should be implemented and whether implementation should be stayed pending a decision in that new action.

B.

We turn now to our reasons for the stay pending a decision in the State's declaratory judgment action.

1.

As noted, the State had two alternatives under § 5 of the Voting Rights Act in light of the voting changes arising out of the Uniform School Law: (1) administrative preclearance by the United States Attorney General; or (2)

a declaratory judgment from the District Court for the District of Columbia. 42 U.S.C. § 1973c. As discussed at length, it opted initially to seek preclearance from the United States Attorney General, and in 1986 submitted the entire Uniform School Law, including §§ 47 and 52, which both repealed § 37-7-611. Most unfortunately, the final word, via litigation, on whether the repeal of § 37-7-611 was precleared was not reached until a few weeks ago, when the Supreme Court affirmed our January 1996 judgment.

It goes without saying both that the Voting Rights Act imposes drastically on a State's power to conduct its affairs, and that it has wide-ranging effects, as evidenced by the fact that, in this case, it has reached into the schoolrooms of Mississippi. See *City of Rome v. United States*, 446 U.S. 156, 179 (1980). Accordingly, the State has now exercised its alternative right under that Act to seek a declaratory judgment that the changes in voting resulting from the repeal of § 37-7-611 do not have a discriminatory purpose or effect. Obviously, it could have done so earlier; but, it was not required to do so. It goes without saying that various cost and other most significant considerations impact on a State's selection from its options. For starters, selecting litigation in a distant and relatively unfamiliar forum -- as required for the declaratory judgment option -- generally would not be the preferred course of action; certainly, it would not be the most economical use of the State's taxpayers, dollars.

While some might question the soundness of the State's strategy in not earlier seeking the declaratory judgment, the State has not acted in bad faith by litigating here, albeit unsuccessfully, its assertion that the repeal of § 37-7-611 was precleared. (For example, initially, we held unanimously that it had been.) In any event, it is not

appropriate to penalize the school districts in the State because the lawfully permitted strategic choices made by the State's Attorney General were not successful.

2.

Our second reason for the stay is to prevent the disruption that would occur if our rulings were implemented and the District of Columbia court later granted judgment for the State. Moreover, until the Supreme Court reached its decision approximately two months ago, no steps had been taken to implement our rulings. (Indeed, we unanimously granted a stay pending appeal to the Supreme Court. That stay ended when the Supreme Court ruled on June 10.)

The 1996-97 school year is about to begin. And, because annexations have occurred involving school districts in addition to those involved in this action, our rulings likely will impact other districts and have the potential to spawn further litigation involving them. If, as a result of implementation of our rulings, municipal school districts expand into annexed territory currently under the control of county school districts, and the State is successful in the District of Columbia, then questions such as the return of property to the county school districts will, result in further disruptions.

Along that line, when implementing our rulings, their impact on the non-voting aspects of the affected statutes must be considered. Although § 5, which is our sole authority for enjoining the enforcement of the state laws in issue, covers only changes in voting, §§ 47 and 52 of the Uniform School Law are not addressed solely to voting; in fact, their impact on voting is minimal in comparison to their impact on students, teachers, school district boundary lines, and tax bases. Before we may craft an appropriate remedy "that in

all the circumstances of the case implements the mandate of § 5 in the most equitable and practicable manner and with the least offense to its provisions". *Clark v. Roemer*, 500 U.S. at 660, we will need to consider carefully these non-voting aspects of the laws affected by our rulings, and, perhaps, consider additional evidence.

The question of what remedy would be appropriate is not a simple matter; for example, the suggestions that citizens in the annexed areas not be allowed to vote in certain elections is, to say the least, a drastic measure. It would be most premature for us to undertake to resolve the complex issues involved in crafting a limited remedy for a § 5 violation, taking into account the impact on non-voting aspects of the statutes at issue, until after a decision has been reached on the State's declaratory judgment action in the District of Columbia.

III.

For the foregoing reasons, the emergency motion was granted. We have every confidence that the defendants will vigorously and aggressively pursue their pending Declaratory judgment action, including seeking to have it expedited in every way possible. Should the plaintiffs be of the view that this is not being done, they may seek relief here. Along this line, the defendants are to submit status reports to this court on the progress of that litigation.

SO ORDERED, this the 7th day of August, 1996.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION

JOHNNY DUPREE, *et al.* **PLAINTIFFS**

v.

MIKE MOORE, Attorney General of Mississippi, in His Official Capacity, and THE STATE OF MISSISSIPPI **DEFENDANTS**

and

THE LAMAR COUNTY BOARD OF EDUCATION and TRUSTEES, *et al.* **DEFENDANTS/INTERVENORS**

and

FORREST COUNTY SCHOOL DISTRICT, *et al.* **DEFENDANTS/INTERVENORS**

CIVIL ACTION NO. 1190-0043(W)

Before this three-judge court, convened under the aegis of § 5 of the Voting Rights Act of 1965, Title 42 U.S.C. § 1973c[1] and Title 28 U.S.C. § 2284[2], is the

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[1] Title 42 U.S.C. § 1973c provides in pertinent part:

"Whenever a State or political subdivision ... shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that

in force or effect on November 1, 1964, ... such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure: Provided, That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, or upon good cause shown, to facilitate an expedited approval within sixty days after such submission, the Attorney General has affirmatively indicated that such objection will not be made. Neither an affirmative indication by the Attorney General that no objection will be made, nor the Attorney General's failure to object, nor a declaratory judgment entered under this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice or procedure. ...

[2] Title 28 U.S.C. § 2284 provides in pertinent part:

> (a) A district court of three judges shall be convened when otherwise required by Act of Congress, ...
>
> (b) In any action required to be heard and determined by a district court of three judges ..., the composition of the court shall be as follows:
>
> > (1) ... the judge to whom the request is presented shall, unless he determines that three judges are not required, immediately notify the chief judge of the circuit, who shall designate two other judges, at least one of whom shall be a circuit judge. ...

motion of the State of Mississippi to issue an emergency stay in the above styled and numbered cause. In an Opinion and Order dated August 27, 1993, this three-judge court held that when Mississippi submitted its comprehensive Uniform School Law of 1986, of which the express repealer of § 37-7-611[3], Section 47, was a part, Mississippi failed to abide by the standard set forth in *Clark v. Roemer*, 500 U.S. 646, 111 S.Ct. 2096, 114 L.2d. 2d 691 (1991) and identify with specificity the anticipated voting changes to be wrought by Mississippi's enactment of Section 47. Accordingly, we found the Section 47 repealer of § 37-7-611 to be ineffective and unenforceable unless and until the United States Attorney General preclears the repealer, or withdraws the objection, or unless and until the State of Mississippi obtains a declaratory judgment from the United States District Court for the District of Columbia that the repealer does not have the purpose and will not have the effect of denying or abridging the right to vote.

The United States Supreme Court vacated the judgment accompanying this court's Memorandum Opinion and remanded this matter for clarification. Specifically, the Supreme Court directed this three-judge court to clarify whether we enjoined only Section 47 of Mississippi's

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[3] Miss. Code Ann. § 37-7-611 (1972) provided in pertinent part:

> Where the corporate limits of any municipality which constitutes a municipal school district, either with or without added territory, are extended so as to include the whole or any part of an existing adjacent school district in the county school system or municipal separate district, then such adjacent school district, or such part thereof as is included within the corporate limits of the municipality by reason of the extension thereof, shall thereby automatically be merged with and become part of such municipal school district. ...

Uniform School Law, 1986 Miss. Gen. Laws ch. 492, or whether we also enjoined Section 52, a precleared portion of that same Uniform School Law, Mississippi Code Annotated Section 37-7-103 (1972 & Supp. 1990), insofar as it implicitly repealed Mississippi Code Annotated Section 37-7-611 (1972). See Moore v. Dupree, ____ U.S. ____, 115 S.Ct. 1684, 131 L.Ed.2d 550 (1995).

By our Order dated December 29, 1995, we responded that Section 52 was also enjoined by this court's Memorandum Opinion, noting that when Section 52 was submitted for preclearance the State of Mississippi had not mentioned that one of the effects of this Section was to repeal § 37-7-611[4]. Our Order concluded that even if Section 52 repealed § 37-7-611, that fact was not submitted to the Attorney General for, preclearance with the specificity required by Clark v. Roemer. Additionally, this court noted that its injunction of Section 52 was rooted in the power of a federal court to issue such commands as may be necessary or appropriate to effectuate and prevent frustration of orders it has previously issued in exercise of its jurisdiction. United States v. New York Telephone Company, 434 U.S. 1352, 98 S.Ct. 364, 372, 54 L.Ed.2d 376 (1977), citing Harris v. Nelson, 394 U.S. 286, 89 S.Ct. 1082, 1090, 22 L.Ed.2d 281 (1969); and Title 28 U.S.C. § 1651 (the All

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[4] Miss. Code Ann. § 37-7-611 (1972) provided in pertinent part:

> Where the corporate limits of any municipality which constitutes a municipal school district, either with or without added territory, are extended so as to include the whole or any part of an existing adjacent school district in the county school system or municipal separate district, then such adjacent school district, or such part thereof as is included within the corporate limits of the municipality by reason of the extension thereof, shall thereby automatically be merged with and become part of such municipal school district. ...

Writs Act)[5]. Finally, we held that the Mississippi Supreme Court's opinion in Greenville Public School District v. Western Line Consolidated School District, 575 So.2d 956 (Miss. 1990), cert. denied, 503 U.S. 950 (1992), which held that § 37-7-611 was implicitly repealed by § 52 of Mississippi's Uniform School Law was not binding on us. We relied on the decision of the United States District Court for the Northern District of Mississippi, the Honorable Neal B. Biggers, Jr. presiding, in Janice M. Nickles, et al. v. Western Line School District, et al., Civil Action No. 4:90-cv-45BO, decided October 30, 1995. Judge Biggers held that Clark v. Roemer was an intervening decision that constituted an exception to the doctrine of res judicata, thus, any binding effect the Mississippi Supreme Court's decision in Western Line may have had was superseded by the United States Supreme Court's decision in Clark v. Roemer.

This three-judge court's decision was affirmed by the United States Supreme Court on June 10, 1996. No party to this litigation sought or has sought rehearing of the matter. Thereafter, on July 10, 1996, the United States Supreme Court issued a certified judgment pursuant to Rule 45.3 of the Rules of the Supreme Court of the United States which provides in pertinent part that, "a formal mandate does not issue unless specially directed; instead, the Clerk of this Court will send the clerk of the lower court a (copy of the opinion and order of this Court and a certified copy of the judgment." Thus, the Supreme Court's affirmance of this court's Memorandum Opinion dated August 27, 1993 and its clarifying Order dated December 29, 1995 was issued as

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[5] Title 28 U.S.C. § 1651 provides that, " [t]he Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to usages and principles of law."

Mandate pursuant to Rule 45.3 and this court's involvement in this matter ceased.

Now, the State of Mississippi, joined by the Forrest County School District, seeks an emergency stay of the certified judgment of the United States Supreme Court from this three-judge panel while the defendants pursue a declaratory judgment action before the district court for the District of Columbia. The majority of this panel believes this emergency stay should be granted. I respectfully dissent for the reasons which follow.

The role of a three-judge court is to adjudicate (1) whether a change is covered by § 5; and (2) if the change was covered, whether § 5 approval requirements were satisfied. See McCain v. Lybrand, 465 U.S. 236, 104 S.Ct. 1037, 1046 n. 17, 79 L.Ed.2d 271 (1984); and Lockhart. v. United States, 460 U.S. 125, 103 S.Ct. 998, 1001 n. 3, 74 L.Ed.2d 863 (1983). See also Campos v. City of Houston, 968 F.2d 446, 452 (5th Cir. 1992) (a three-judge court is required only to decide whether § 5 applies, and if so, whether it has been satisfied), cert. denied, ____ U.S. ____, 113 S.Ct. 971, 122 L.Ed.2d 126 (1993). Section 5 plainly contemplates injunctive relief. Indeed, the Supreme Court has held that a complaint for injunctive relief to be heard by a district court of three judges may be filed in any United States District Court and that court, if it is shown that § 5 applies, must enjoin the utilization or implementation of any change in voting procedure until there is (compliance with § 5. See Lucas v. Townsend, 698 F.Supp. 909, 910 (M.D. Ga. 1988), citing Allen v. Board of Elections, 393 U.S. 544, 89 S.Ct. 817, 22 L.Ed.2d 1 (1969). Thus, the relief contemplated under § 5 clearly is injunctive relief to stay the enforcement of a State's suspect legislation pending federal review.

In the instant case this function has been completed. More importantly, this three-judge court's decision has been affirmed by the United States Supreme Court in its appellate capacity. When three-judge panels are used, direct appeal is to the United States Supreme Court[6]. This is the only circumstance where the Supreme Court still has appellate jurisdiction. See E. Cherminsky Federal Jurisdiction, 2d ed., § 10.3 p. 592, quoting Pub. L. No. 100-352, 102 Stat. 662 (1988). Thus, sitting as an "appellate court" reviewing the decision of a "district court," the Supreme Court issued its mandate in the form of a certified judgment. That judgment is binding and final. In view of the many authorities cited by the plaintiffs, I must conclude that the function of the three-judge panel in the instant case has come to a close and it has no authority to stay the execution of the Supreme Court's certified judgment (mandate).

Remedies to correct errors in conducting voting procedures which have not been precleared should be fashioned by the district court after hearing the views of the parties. See Perkins v. Matthews, 400 U.S. 379, 91 S.Ct. 431, 440-41 (1971). The Perkins decision places this duty upon the district court, not upon a special three-judge panel called for the limited purpose of determining whether a State's enactment is covered by § 5 and requires preclearance. The majority misconstrues the directive of Perkins, believing that the Supreme Court was directing a three-judge panel to step outside the bounds of its very limited role. See Campos City of Houston, 968 F.2d at 451, citing United States v. Board of Supervisors, 429 U.S. 642, 97 S.Ct. 833, 834, 51 L.Ed 2d 106 (1977) (a three-judge court convened under § 5 is of limited jurisdiction and

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[6] Title 28 U.S.C. § 1253 provides for direct appeal from three-judge courts, as well as other specific statutes.

limited authority); McCain v. Lybrand, 104 S.Ct. 1037, 1050 (finding that preclearance of South Carolina's enactment was required and remanding the case to the district court, not to a three-judge panel, for further proceedings); Morse v. Republican Party of Virginia, ____ U.S. _____, 116 S.Ct. 1186, 1213, ____ L.Ed.2d _____ (1996) (after three-judge panel found matter did not require preclearance, Supreme Court reversed and remanded to the district court, not the three-judge panel, for further proceedings).

Then, even if this three-judge court should be construed as a "district court," a question arises as to what authority a district court might have over a matter once the mandate of an appellate court has been issued. The plaintiffs argue that whatever jurisdiction a district court has over matters on appeal ends when the appellate court issues its mandate, citing Belyeu v. Johnson, 82 F.3d 613, 615 (5th Cir. 1996) (citing non-habeas authority to conclude that appellate court's mandate superseded district court's original stay of execution); Brinkman v. Department of Corrections, 857 F.Supp. 775, 777 (D.Kan. 1994) (district court may issue stay while appeal is pending but loses the power to stay judgment once mandate is issued); Gander v. FMC Corp., 733 F.Supp. 1346, 1347 (E.D. Mo. 1990) (power of district court to grant a stay of judgment pending appeal terminates when mandate is issued) and Meridith v. Fair, 306 F.2d 374, 376 (5th Cir.), cert. denied, 371 U.S. 828 (1962) (holding that a single judge of the Circuit Court of Appeals could not stay an appellate court mandate because, once mandate had issued, logically it was too late to stay it).

Additional authorities illustrating the foregoing principal and cited by the plaintiffs are Gradsky v. United States, 376 F.2d 993, 995 (5th Cir.), vacated on other grounds sub nom., Roberts v. United States, 389 U.S. 18

(1967) (usually the issuance of a mandate by [the appellate court] means that the litigation has come to an end). accord Overnite Transp. Co. v. Chicago Indus. Tire Co., 697 F.2d 789 (7th Cir. 1983) ("Once this court rendered its decision and docketed its mandate affirming the district court's dismissal of [plaintiff's] action against [defendant] no case or controversy any longer existed between the litigants herein."); Greater Boston Television Corp. v. FCC, 463 F.2d 268, 277 (D.C. Cir. 1971) (quoting Gradsky), cert. denied, 406 U.S. 950 (1972); and Mirchandiani v. United States, 836 F.2d 1223, 1225 (9th Cir. 1988) (the requirement that lower courts adhere to the mandate of an appellate court is necessary to the operation of hierarchical judicial system).

However, notwithstanding this question of review authority in the face of a mandate of the appellate court, there remains the unquestioned authority of a district court to examine changes in fact or law, occurring subsequently to the mandate, which would make carrying out the judgment inappropriate or unjust. Of course, the mechanism for this form of consideration is a motion pursuant to Rule 60(b) of the Federal Rules of Civil Procedure. See Standard Oil of California v. United States, 429 U.S. 17, 97 S.Ct. 31, 50 L.Ed.2d 21 (1976), holding that a district court may entertain a Rule 60(b) motion without seeking a recall of mandate because the mandate does not deal with later events occurring after its issuance.

I agree with plaintiff that no "later events" have occurred since July 10, 1996, which would support setting aside the final judgment in the instant case under Rule 60(b). This record is barren of any mistake, surprise, excusable neglect, newly discovered evidence, fraud or misconduct. The certified judgment of the Supreme Court is not void and it has not been reversed. The Supreme Court has affirmed

our injunction which requires the defendants to comply with the Voting Rights Act. Finally, the defendants have utterly failed to present any extraordinary or unforeseen circumstances in support of the emergency stay. The expected consequences of this court's ruling being affirmed by the Supreme Court have been known to the defendants at least since August 27, 1993 when this court's judgment was entered. A recent and extensive newspaper article covering this matter reveals the affected school districts already to be well down the transitional road in light of the Supreme Court's June 10, 1996 judgment, with facility repairs and maintenance; upgrading of educational tools (five computers per classroom at Earl Travillion Middle School) and satisfactory teacher assignments throughout the system. If anything, granting an emergency stay at this point would create far more confusion for the affected school districts.

In support of granting the emergency stay, the majority relies on little more than the inherent power of courts to stay matters on their dockets. See Landis v. North American Company, 299 U.S. 248, 57 S.Ct. 163, 81 L.Ed. 153 (1936). Of course, the majority presumes that this three-judge panel is being asked to stay a matter on its docket when the actual request is for this court to stay a certified judgment of the Supreme Court. Landis' general rule simply does not apply to the instant case. The majority also cites Perkins v. Matthews, 400 U.S. 379, 91 S.Ct. 431, 434, 27 L.Ed.2d 476 (1971) for the proposition that appropriate remedies for § 5 violations should be made by the district court. This three-judge panel on August 27, 1993 issued an injunction which was clarified on December 29, 1995. Thus, the appropriate remedy has been determined. The consequences of that remedy, if any, are not within the province of the three-judge panel to ameliorate. Furthermore, the consequences of the injunction have not been

shown by the defendants to be so insurmountable as to require granting an emergency stay of the United States Supreme Court's certified judgment by the district court under Rule 60(b).

So, after having spent years in an unsuccessful attempt to establish that the subject statute has been precleared, knowing full well the consequences of an unsuccessful campaign, the State unabashedly now asks this court to stay its injunction, allow the unprecleared statute to continue to govern, while the State embarks on new litigation in another court with an uncertain time period for resolution. Surprisingly, the majority has consented to this approach, an approach which in clear contravention of § 5 continues in force and effect an adjudicated unprecleared statute. Moreover, in view of the majority's decision, the arduous efforts of this three-judge court to resolve this dispute must be construed as nothing. By the majority's decision to allow a stay, the plaintiffs herein are right where they were when the litigation began, no matter that in the interim the United States Supreme Court has ruled in their favor and issued a mandate.

In addition to the plaintiffs, there is another victim here, § 5 itself. The majority's decision promises to undermine the directive and thrust of § 5. Section 5 relies upon the power of the injunction to prevent a covered state from imposing an unprecleared law upon its populous. Here, without benefit of any unexpected consequence befalling the State of Mississippi after the Supreme Court's ruling, the majority has decided to withhold its injunctive hand and, instead, politely wave at the defendants as they march by to another court and continue to operate as usual.

Stays of execution of certified judgments and mandates should be predicated upon doubtful questions of law unresolved by earlier court decisions. See Meredith v. Fair, 306 F.2d 374, 376 (5th Cir. 1962). They should not become ensconced in our jurisprudence as a tool for circumventing the findings of three-judge courts empaneled under § 5 which have been affirmed by the United States Supreme Court.

Therefore, I would not grant an emergency stay in the instant case and respectfully dissent to the opinion of the majority.

s\Henry T. Wingate
HENRY T. WINGATE
UNITED STATES DISTRICT JUDGE

Dupree v. Moore 3:90-cv-0043(W)
Dissent to Granting of Emergency Stay

APPENDIX B

IN THE UNITED STATES OF DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION

JOHNNY DUPREE, et al. **PLAINTIFFS**

vs. **CIVIL ACTION NO. H90-0043(W)**

MIKE MOORE, Attorney General of Mississippi, in His Official Capacity, and THE STATE OF MISSISSIPPI **DEFENDANTS**

and

THE LAMAR COUNTY BOARD OF EDUCATION and TRUSTEES, et al. **DEFENDANTS/INTERVENORS**

and

FORREST COUNTY SCHOOL DISTRICT, et al. **DEFENDANTS/INTERVENORS**

ORDER

"Plaintiffs' Motion to Vacate Stay" is DENIED. Judge Wingate dissents.

SO ORDERED, this the 19th day of August, 1996.

s/RHESA HAWKINS BARKSDALE
RHESA HAWKINS BARKSDALE
UNITED STATES CIRCUIT JUDGE

s/TOM S. LEE
TOM S. LEE
UNITED STATES DISTRICT JUDGE

APPENDIX C

IN THE UNITED STATES OF DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION

JOHNNY DUPREE, et al. **PLAINTIFFS**

vs. **CIVIL ACTION NO. H90-0043(W)**

MIKE MOORE, Attorney General of Mississippi, in His Official Capacity, and THE STATE OF MISSISSIPPI **DEFENDANTS**

and

THE LAMAR COUNTY BOARD OF EDUCATION and TRUSTEES, et al. **DEFENDANTS/INTERVENORS**

and

FORREST COUNTY SCHOOL DISTRICT, et al. **DEFENDANTS/INTERVENORS**

ORDER

The "State Defendants' Emergency Motion for Stay" is GRANTED. An opinion in support of this Order will ssue in due course, with Judge Wingate in dissent.

SO ORDERED, this the 30th day of July, 1996.

s/RHESA HAWKINS BARKSDALE
RHESA HAWKINS BARKSDALE
UNITED STATES CIRCUIT JUDGE

s/TOM S. LEE
TOM S. LEE
UNITED STATES DISTRICT JUDGE

APPENDIX D

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI HATTIESBURG DIVISION

JOHNNY DUPREE, JEFF R. BOWMAN, KATHRYN JONES and CHARLOTTE TULLOS, Individually and in Their Official Capacities as Members of the Board of Trustees of the Hattiesburg Public School District, **PLAINTIFFS**

v. **Civil Action No. H90-0043(W)**

MIKE MOORE, Attorney General of Mississippi, in His Official Capacity, and the STATE OF MISSISSIPPI, **DEFENDANTS**

THE LAMAR COUNTY BOARD OF EDUCATION and TRUSTEES, in Their Official Capacities, Charles L. Cameron, Rita Downs, Tommy Graham, Freddie G. Howell and Dr. Johnny R. Purvis **DEFENDANTS/INTERVENORS**

FORREST COUNTY SCHOOL DISTRICT and the Members of the BOARD OF TRUSTEES Thereof in Their Official Capacities **DEFENDANTS/INTERVENORS**

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Johnny Dupree, Jeff R. Bowman, Kathryn Jones, and Charlotte Tullos, Individually and in Their Official Capacities as Members of the Board of Trustees of the Hattiesburg Public School District, the Plaintiffs above-named, hereby appeal to the Supreme Court of the United States from the order entered on July 30, 1996, by the three-judge district court granting the "State Defendants' Emergency Motion for Stay" and the order entered on August 19, 1996, denying "Plaintiffs' Motion to Vacate Stay".

This appeal is taken pursuant to 28 U.S.C. § 2101(b) and 42 U.S.C. § 1973c.

DATED: August ___, 1996.

s/Perry Sansing
Perry Sansing, One of the
Attorneys for the Plaintiffs

Supreme Court, U.S.
FILED
DEC 2 1996
CLERK

No. 96-669

In The

Supreme Court of the United States

October Term, 1996

JOHNNY DUPREE, *et al.*,

Appellants,

vs.

MIKE MOORE, *et al.*,

Appellees.

On Appeal From The United States District Court For The Southern District Of Mississippi

MOTION TO DISMISS OR AFFIRM

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QUESTIONS PRESENTED

Whether the district court properly acted within its discretion and authority in staying the implementation of injunctive relief in light of the circumstances before it?

Whether the potential impact of this case on other Voting Rights Act cases is significant enough to warrant further review?

PARTIES TO THE PROCEEDING BELOW

The parties in the court below were:

Plaintiffs: Johnny Dupree, Jeff R. Bowman, Catherine Jones and Charlotte Tullos, individually and in their official capacities as members of the Board of Trustees of the Hattiesburg Public School District.

Defendants: Ray Mabus, in his capacity as Governor of Mississippi, Mike Moore, in his capacity as Attorney General of Mississippi, and the State of Mississippi.

Defendants/Intervenors: (1) Lamar County Board of Education and Trustees, in their official capacities. At the time the action was filed, the members of the Lamar County Board were Charles L. Cameron, Rita Downs, Tommy Graham, Fredie D. Howell and Dr. Johnny R. Purvis. Stephen High has replaced Rita Downs on the Board. (2) Forrest County School District and Members of its Board of Trustees, in their official capacities. At the time the action was filed, the members of the Forrest County Board were Bobby Patrick, Frank Myers, Mike Gilpin, John E. Clark and W. Larry Thompson. Terry Ryals has replaced Bobby Patrick on the Board.

Amicus Curiae: The United States was granted leave to participate as amicus curiae.

The Plaintiffs in the court below are the Appellants in this Court. The Appellees in this Court are the Defendants and the Defendants/Intervenors with the exception of Ray Mabus, former Governor of Mississippi, who was dismissed by the District Court and is not a party to this appeal.

PARTIES TO THE PROCEEDING BELOW – Continued

This Motion to Dismiss or Affirm is filed on behalf of the Forrest County School District and Members of Its Board of Trustees, in their official capacities, and Mike Moore, in his capacity as Attorney General of Mississippi, and the State of Mississippi, only. The Lamar County Board of Education and Trustees in their official capacities are filing a separate motion to dismiss or affirm. Even though these Appellees are filing a separate Motion to Dismiss or Affirm, they join in those arguments forwarded in the motion to dismiss or affirm filed by the Lamar County Board of Education and Trustees.

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MOTION TO DISMISS OR AFFIRM

INTRODUCTION

Pursuant to Rule 18.6, the Appellees move to dismiss this appeal or, alternatively, to affirm the decision of the three-judge court below. The motion is based on the grounds that (1) the lower court's stay is based on very specific and restricted extenuating circumstances of a local nature which are unique to the instant case and which will have no far-reaching implications on Voting Rights Act cases nationwide; and (2) the lower court acted correctly and within its discretion in granting the stay, given the local circumstances before it, and no further review is warranted.

REPORTED OPINIONS BELOW

The Appellants correctly note in their Jurisdictional Statement that the opinion of the district court (Appellants' App. A-1) is not yet reported. However, other official and unofficial reported opinions and orders entered in this lengthy litigation are as follows: *Dupree v. Mabus*, 776 F. Supp. 290 (S.D. Miss. 1991) (*Dupree I*), *vacated and remanded, Dupree v. Moore*, 503 U.S. 930, 117 L. Ed. 2d 609, 112 S. Ct. 1462, 60 U.S.L.W. 3651 (1992), *on remand, Dupree v. Moore*, 831 F. Supp. 1310 (S.D. Miss. 1993) (*Dupree II*), *appeal dismissed, Moore v. Dupree*, 510 U.S. 1068, 127 L. Ed. 2d 69, 114 S. Ct. 872, 62 U.S.L.W. 3470 (1994), *later proceeding, Moore v. Dupree*, 130 L. Ed. 2d 308, 115 S. Ct. 352, 63 U.S.L.W. 3311 (1994), *vacated and remanded, Moore v. Dupree*, 131 L. Ed. 2d 550, 115 S. Ct. 1684, 63 U.S.L.W. 3753 (1995), *on remand, Dupree v. Moore*,

No. H90-0043(W) (S.D. Miss. Dec. 29, 1995) (*Dupree III*), *aff'd mem.*, 135 L. Ed. 2d 186, 116 S. Ct. 2493, 64 U.S.L.W. 3820 (1996), *Dupree v. Moore*, No. H90-0043(W) (S.D. Miss. Aug. 7, 1996) (*Dupree IV*), *application to vacate stay denied*, 135 L. Ed. 2d 1123, 117 S. Ct. 30, 65 U.S.L.W. 3204 (Sept. 6, 1996).

STATEMENT OF THE CASE

The procedural history of the instant litigation has been, for the most part, accurately outlined in the Appellants' Jurisdictional Statement. That procedural history will not be repeated here. However, the Appellants failed to state that, after filing the instant Notice of Appeal, Appellants filed an Application to Vacate Stay Issued by United States District Court Pending Appeal with Justice Scalia. That application was denied on September 6, 1996. (*See* Appellees' App. F at 89a.)

The Appellants also failed to outline certain facts and circumstances surrounding the lower court's consideration of the requested stay. In *Dupree II*, the district court concluded that the repeal of § 37-7-611 by § 47 of the Uniform School Law was:

> [I]neffective and unenforceable unless and until the State of Mississippi gets either the United States Attorney General to preclear the repealer, or to withdraw his objection, or the State of Mississippi obtains a declaratory judgment from the District of Columbia district court stating that the repealer has no discriminatory effect upon voting rights in Mississippi.

Dupree v. Moore, 831 F. Supp. 1310, 1318 (S.D. Miss. 1993). On June 10, 1996, on the eve of a new school year, the district court's ruling was affirmed by this Court. On July 17, 1996, the State filed the emergency motion for stay now at issue, contending that implementation prior to the start of a new school year (which began on August 12, 1996) would cause irreparable harm to children and teachers in school districts throughout the state. (*See* State Defs.' Emergency Mot. for Stay, and attachments thereto, Appellees' App. A at 1a.) In its motion for a stay, the State also informed the district court it had instituted a declaratory judgment action in the district court for the District of Columbia under § 5 of the Voting Rights Act, 42 U.S.C. § 1973c, seeking preclearance of the statutory enactments in question.

Attached to the State's emergency motion for a stay was the affidavit of Judy Rhodes, Director of Educational Accountability with the Mississippi Department of Education. (Appellees' App. A at 6a.) In her affidavit, Ms. Rhodes outlined in detail grave and irreparable injury which would occur statewide if the school district boundaries were allowed to be moved before the imminent school year.[1] That harm included, among other things, a devastating shift of assessed value per child for tax purposes from county districts to municipal districts (which the legislation in question was enacted, in part, to prevent) and the potential for some county districts to be

---

[1] Implementation of the district court's injunction had been stayed pending the appeal to the U.S. Supreme Court.

without buildings for certain grade levels for the upcoming school year. Administrative problems, such as reassignment of teachers and students, student transportation upheaval and the fact that some school districts might be forced to honor contracts of teachers no longer needed, were also outlined. (Appellees' App. A at 6a-28a.)

The Forrest County School District joined in the State's Emergency Motion for Stay on July 18, 1996 (Appellees' App. B at 35a) and later submitted affidavits of local school and tax officials in support of the motion for a stay. (Appellees' App. D at 63a-75a.) The Lamar County School District joined in the State's emergency motion for a stay on July 26, 1996. (Appellees' App. C at 38a.)

The district court, considering all of the evidence submitted by the parties, determined that the equities weighed heavily in favor of granting the stay, given the upheaval which would be caused by moving school district lines across the state on the eve of a school year, affecting students, teachers and principals alike. Without the stay, entire schools would have been moved from one district to another, with only a matter of weeks to effect such transfers.

The district court also noted the State had filed a declaratory judgment action in the district court for the District of Columbia seeking judicial preclearance of the statutory enactments in question. As a result, without the stay, a favorable ruling for the State in the District of Columbia action could necessitate moving school district boundaries back where they had previously been. The

district court hinted heavily that it would give preclearance by the District of Columbia court retroactive effect when it stated, "If, as a result of implementation of our rulings, municipal school districts expand into annexed territory currently under the control of county school districts, and the State is successful in the District of Columbia, then questions such as the return of property to the county school districts will result in further disruptions." (Appellants' App. A at A-15.) The district court, in granting the stay, hoped to unnecessarily avoid the potential for *two* major upheavals within the school system in the State of Mississippi.

After the district court denied the Appellants' motion to vacate stay (Appellants' App. B at B-1), this appeal ensued. The Appellants' application to this Court to vacate the stay pending this appeal was denied on September 6, 1996. (Appellees' App. F at 89a.)

ARGUMENT

I. THE DISTRICT COURT HAD AUTHORITY TO ENTER THE STAY.

The Appellants maintain the district court did not have authority to enter the stay in question. The Appellants incorrectly contend that the stay operated to stay the mandate of this Court. The Appellants seek to revive a long discredited procedural device and cite inapposite authority in the effort. In *Standard Oil of California v. United States*, 429 U.S. 17 (1976), this Court already expressly rejected the rule the Appellants would have this Court now adopt. It ruled that district courts may

modify judgments notwithstanding the fact the judgment has been summarily affirmed by the Supreme Court, and may do so without leave of the Supreme Court. The modification sought in the district court in *Standard Oil* was to have the judgment set aside entirely, not merely stayed temporarily as is sought here.

In the *Standard Oil* case, this Court recognized that "***in the past*** both this court and many courts of appeals have required appellate leave before the district court could reopen a case which had been reviewed on appeal." *Id.* at 17 (emphasis added). This Court went on to hold that (1) since the appellate mandate related to the record and issues then before the court and (2) because district courts can recognize frivolous motions to reopen a case, and further, (3) since the requirement of obtaining appellate leave for reopening a case adds to the expense of litigation, parties are not required to obtain leave from the appellate court, prior to requesting the district court to set aside the issuance of the injunction. This Court further noted that "[i]ndeed, the trial court 'is in a much better position to pass upon the issues presented in a motion pursuant to Rule 60(b). . . . ' " *Id.* at 19 (quoting *Wilkin v. Sunbeam Corp.*, 405 F.2d 165, 166 (10th Cir. 1968)).

This Court, in *Standard Oil*, further illuminated this point as follows:

> The appellate-leave requirement adds to the delay and expense of litigation and also burdens the increasingly scarce time of the federal appellate courts. ***We see no reason to continue the existence of this 'unnecessary and undesirable***

> *clog on the proceedings.' S.C. Johnson and Son, Inc. v. Johnson*, 175 F.2d 176, 184 (2nd Cir. 1949) (Clark, J., dissenting).

(Emphasis added.) In *Dow Chemical, USA v. Consumer Product Safety Commission*, 464 F. Supp. 904, 907 (W.D. La. 1979), that court also recognized the impracticability of requiring appellate leave prior to a district court entertaining a Rule 60(b) motion in a post mandate case, stating, *inter alia*, "[i]sn't the trial court in a better position to pass upon the issues presented in a . . . motion considering its familiarity with the case and its reasons for granting the injunction?"

Federal Rule of Civil Procedure 60(b) grants the court broad discretion to maintain jurisdiction over its injunction and to modify it as it sees fit. As the Appellants note, Rule 60(b)(5) "refers to some change in conditions that makes continued enforcement inequitable." C. WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 2863 (1995). Rule 60(b)(6) states that a party may be relieved from certain effects of a final judgment, order or proceeding for "any other reason justifying relief from the operation of the judgment." A broader grant of discretion cannot be imagined. The lower court noted that both Rule 60(b)(5) and (b)(6) authorized its stay when it stated:

> Alternatively, based on the State's seeking a declaratory judgment in the District of Columbia, relief would be appropriate under Rule 60(b)(5), authorizing relief from a judgment when 'it is no longer equitable that the judgment should have prospective application', or 60(b)(6), which provides that a court 'may

> relieve a party . . . from a final judgment . . . [for] any other reason justifying relief from the operation of the judgment.'

(Appellants' App. at A-12.)[2]

In the case of *Ingraham v. United States*, 808 F.2d 1075, 1080-81 (5th Cir. 1987), the Fifth Circuit, relying on *Standard Oil, supra*, stated the following:

> We are mindful that Rule 60(b) is " '***a grand reservoir of equitable power to do justice in a particular case.***' " *Seven Elves, Inc. v. Eskenazi*, 635 F.2d 396, 402 (5th Cir. 1981) (quoting, *Menier v. United States*, 405 F.2d 245, 248 (5th Cir. 1968). As such, a Rule 60(b) motion may be entertained in the district court at any time within a year of judgment, regardless of the pendency, ***or even the completion of an appeal.*** *Standard Oil Co. v. United States*, 429 U.S. 17 (1976).

(Emphasis added.)

The broad range of equitable powers granted to district courts is particularly applicable in injunction cases. This principle is evidenced by the following language from the Court of Appeals for the Fifth Circuit:

> An injunction is by nature an equitable decree. The power of a federal court that enters an equitable injunction is not spent simply because it has once spoken. The federal courts

---

[2] The district court also noted that its "remedial powers permit . . . modifying or staying the implementation of such injunctive relief in light of subsequent developments," citing *Landis v. North American Co.*, 299 U.S. 248, 254-56 (1936). (Appellants' App. at A-12).

> have always affirmed their equitable power to modify any final decree that has prospective application. As Justice Cardozo stated over half a century ago in *United States v. Swift & Co.*, 'A continuing decree of injunction directed to events to come is subject always to adaptation as events may shape the need.' [footnote omitted] The 'continuing responsibility of the issuing court over its decrees is a necessary concomitant of the prospective operation of equitable relief,' Wright and Miller state. [footnote omitted] And they add, 'Inasmuch as an injunctive decree is drafted in light of what the court believes will be the future course of events, a court must continually be willing to redraft the order at the request of the party who obtained equitable relief in order to insure that the decree accomplishes its intended result.' [footnote omitted]

United States v. Lawrence County School Dist., 799 F.2d 1031 (5th Cir. 1986).

Moreover, in considering whether a district court has jurisdiction to consider a party's motion for restitution, the Court of Appeals for the Ninth Circuit stated that "[t]he subject of the controversy was properly before the district court, because the mandate of the Court of Appeals, once issued, returns to the district court. *Caldwell v. Puget Sound Electrical Apprenticeship & Training Trust*, 824 F.2d 765, 766 (9th Cir. 1987). Distinguishing cases in which a district court abuses its discretion by granting relief beyond the scope of the mandate issued by a higher court, the *Caldwell* court found no error in the district court's equitable ruling which was consistent with the higher court's mandate. *Id.* at 767 (*citing Quern v.*

Jordan, 440 U.S. 332 (1979) and *Anderson v. Knox*, 300 F.2d 296, 298 (9th Cir. 1962)). *See also Panama Processes SA v. City's Service Co.*, 789 F.2d 991 (2nd Cir. 1986) (as long as appellate court has not expressly or implicitly ruled on an issue, the district court has not transgressed any jurisdictional boundaries by amending judgment after appeal has been taken and disposed of).

In the instant case, this Court never considered any request for a stay. In fact, a stay was in effect at the time the Supreme Court considered the appeal. Likewise, as the district court noted, in summarily affirming the district court's judgment, this Court did not address what remedy was appropriate for implementing and enforcing it. On this point, the lower court stated as follows:

> Contrary to the plaintiffs' assertion, this stay, pending a decision by the District Court for the District of Columbia, does not have the effect of staying the Supreme Court's mandate. In affirming our judgment, the Court did not address what remedy was appropriate for implementing and enforcing it. Moreover, in prior Voting Rights Act cases, the Court has indicated that the choice of an appropriate remedy for a § 5 violation should be made by the district court. *See Perkins v. Matthews*, 440 U.S. 379, 396-97 (1971) (refusing to set aside election conducted under unprecleared law and stating that, '[s]ince the District Court is more familiar with the nuances of the local situation than we are, and has heard the evidence in this case, we think the question of the appropriate remedy is for that court to determine, in the first instance, after hearing the views of both parties'); *Clark v. Roemer*, 500 U.S. at 659-60 (refusing to set aside

> judicial elections and stating that the district court is in a better position to fashion relief, because it is more familiar with the nuances of the local situation).
>
> In sum, the State sought the declaratory judgment, as it was entitled – *and, in essence, had been invited by this court* – to do after the Supreme Court's decision. We are free to consider that change in circumstances by determining how our judgment should be implemented and whether implementation should be stayed pending a decision in that new action.

(Appellants' App. at A-12, A-13) (emphasis in original).

In its opinion granting the stay, the district court also noted that, in *Dupree II*, it:

> [A]ddressed only 'the *narrow* issue . . . [of] whether the State . . . identified the repealer of § 37-7-611 [§ 47 of the Uniform School Law] unambiguously and with the specificity required to constitute a proper submission of the matter to the United States Attorney General for preclearance.' *Dupree v. Moore*, 831 F. Supp. 1310, 1313 (S.D. Miss. 1993) (emphasis added).

(Appellants' App. at A-7.)

The Appellants have made much of the fact that the Defendants and Defendants/Intervenors referred to the appropriate remedy in previous appeals to this Court, claiming that this Court considered and ruled on the appropriate remedy. However, in all of those situations, the Defendants and Defendants/Intervenors were raising the fact that the district court had not yet implemented a remedy – not that the district court had implemented an

incorrect remedy. Apparently, the district court is prepared to address the specific remedy required, but would prefer to allow the District Court for the District of Columbia to rule on the preclearance issue, thus perhaps obviating the need for a remedy, the consideration of which could be very complex and require consideration of additional evidence. In its opinion granting the stay, the district court stated as follows:

> Before we may craft an appropriate remedy 'that in all the circumstances of the case implements the mandate of § 5 in the most equitable and practicable manner and with the least offense to its provisions', *Clark v. Roemer*, 500 U.S. at 660, we will need to consider carefully these non-voting aspects of the laws affected by our rulings, and, perhaps, consider additional evidence.
>
> The question of what remedy would be appropriate is not a simple matter; for example, the suggestions that citizens in the annexed areas not be allowed to vote in certain elections is, to say the least, a drastic measure. It would be most premature for us to undertake to resolve the complex issues involved in crafting a limited remedy for a § 5 violation, taking into account the impact on non-voting aspects of the statutes at issue, until after a decision has been reached on the State's declaratory judgment action in the District of Columbia.

(Appellants' App. at A-15, A-16.)

Additionally, the cases on which Appellants rely for the proposition that the district court lacked jurisdiction to grant the stay are inapposite to the situation presently before this Court and do not stand for the proposition for

which they are cited. The cases relied on by the Appellants primarily deal with the issue of whether a district court retains authority to issue a stay ***after the appellate court has issued its mandate pending an application for certiorari to the United States Supreme Court***. *See, e.g., In re Stumes,* 681 F.2d 524, 525 (8th Cir. 1982); *Brinkman v. Dept. of Corrections State of Kansas,* 857 F. Supp. 775 (D. Kan. 1994); *Gander v. FMC Corp.,* 733 F. Supp. 1346, 1347 (E.D. Mo. 1990); *Mister v. Illinois Cent. Gulf R.R. Co.,* 680 F. Supp. 297, 298-99 (S.D. Ill. 1988), *cert. denied,* 485 U.S. 1035 (1988); *Hovater v. Equifax Services, Inc.,* 669 F. Supp. 392, 393 (N.D. Ala. 1987), *cert. denied,* 484 U.S. 977 (1987); *Studiengesellschaft Kohle, mbH v. Novamont Corp.,* 578 F. Supp. 78, 80 (S.D.N.Y. 1983). While these cases stand for the proposition that, pursuant to the terms of 28 U.S.C. § 2101(f), pending an application for certiorari to the Supreme Court, only the Court of Appeals or a justice of the United States Supreme Court can stay the execution or enforcement of the ***Court of Appeals judgment***, said statute has not been invoked and the State Defendants and Defendants/Intervenors do not ask this Court to stay the mandate of a court of appeals, or for that matter, the United States Supreme Court. This is not a matter brought under the terms of 28 U.S.C. § 2101(f).

Moreover, even the cases cited by Appellants stand for the proposition that, after the issuance of a mandate, the district court regains jurisdiction of the case for the purpose of enforcing the judgment. *Brinkman,* 857 F.Supp. at 776-77. Nor is the situation presently before this Court controlled by cases such as *Belyeu v. Johnston,* 82 F.3d. 613 (5th Cir. 1996), a habeas case, which essentially stands for

the proposition that a federal district court's stay of execution is dissolved once the appellate court mandate is issued. In *Burrows v. Falck*, 11 F.3d 729 (7th Cir. 1993), another case cited by Appellants, the Seventh Circuit held that when it remanded an attorneys' fees matter to a district court with instructions on the amount that could be granted, the district court could not ignore that mandate and set the rate at the same amount which had been reversed by the appeals court.

The district court clearly did not do anything inconsistent with the Supreme Court's mandate. It found that §§ 47 and 52 of the Uniform School Law of 1986 had not been precleared and issued an injunction. This Court affirmed the district court's finding. The district court now has equitable jurisdiction over the injunction which it earlier issued and may modify that injunction if warranted by the circumstances that currently exist. The district court did not reconsider its finding that §§ 47 and 52 were not precleared, it simply considered the circumstances and issued a temporary stay of its injunction based on those severe and extenuating circumstances.

At the time the district court initially issued its injunction, the State had not filed an action in the district court for the District of Columbia seeking preclearance of the statutes in question through the judicial method. Likewise, the timing of this Court's affirmance caused additional problems of which the district court could not have been aware at the time the injunction was originally issued. No one could have predicted that the timing of this Court's decision would push implementation of wide-scale boundary changes so close to the beginning of an impending school year. Nor could it have been taken

for granted at any time that the State would file a lawsuit in the district court for the District of Columbia, seeking judicial preclearance. That decision was only made by the Attorney General after this Court summarily affirmed the lower court's decision on June 10, 1996.[3]

The Appellants take issue with the reliance of the State and Defendants/Intervenors on *Berry v. Doles*, 438 U.S. 190 (1978) and *NAACP v. Hampton County Election Commission*, 470 U.S. 166 (1985), for the proposition that preclearance of a voting change which has already taken place can retroactively satisfy § 5. As a result, Appellants erroneously contend that success in the District of Columbia action would have no effect on the *Dupree* injunction. District courts construing those two U.S. Supreme Court decisions agree that those cases suggest

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[3] The Appellants have maintained that the State's failure to file such an action in the past should now be held against the State and Defendants/Intervenors. During the *Dupree* litigation, it was always the State's position that the statutes in question had been precleared. Indeed, the district court initially agreed with the State's position, and this Court remanded this matter twice for further consideration. It would not have been judicially economical to simultaneously file suit in the District of Columbia.

Likewise, had such an action been filed earlier, the Plaintiffs would have no doubt argued the filing of such an action served as an admission that the statutes in question had not been precleared.

Finally, the district court also noted that "selecting litigation in a distant and relatively unfamiliar forum – as required for the declaratory judgment option – generally would not be the preferred course of action; certainly, it would not be the most economical use of the State's taxpayers' dollars." (Appellants' App. A at A-14.)

retroactive preclearance is proper. One of those district courts so construing is the district court for the Northern District of Mississippi. In *Moore v. Caledonia Natural Gas District*, 890 F. Supp. 547 (N.D. Miss. 1995), the district court for the Northern District of Mississippi considered the validity of an election which was held on December 21, 1993, but which was not precleared by the United States Attorney General until February 15, 1994. In finding that the preclearance had retroactive effect, the district court stated:

> The crux of the matter is whether the late submission of the December 21, 1993, initial election date and the Attorney General's approval of that date well after the election, constitutes pre-clearance for purposes of Sec. 5. [footnote omitted] The United States Supreme Court has not addressed the issue of retroactive preclearance under these circumstances, but in two opinions the Justices have approved of its use. In *Berry v. Doles*, 438 U.S. 190, 98 S.Ct. 2692, 57 L.Ed.2d 693 (1978), the Supreme Court determined that a procedure for staggered elections which had not been submitted for approval to the Attorney General was a Sec. 5 violation. As to retroactive preclearance, the Supreme Court stated:
>
> > [W]e adopt the suggestion of the United States that the District Court should enter an order allowing appellees 30 days within which to apply for approval of the 1968 voting change under Sec. 5. *If approval is obtained, the matter will be at an end.* If approval is denied, appellants are free to renew to the District Court their request for

> simultaneous election of all members of the Board at the 1978 general election.
>
> *Id.* 438 U.S. at 193, 98 S.Ct. at 2698. In *NAACP v. Hampton County Election Comm'n*, 470 U.S. 166, 105 S.Ct. 1128, 84 L.Ed.2d 124 (1985), the Supreme Court allowed the appellees 30 days in which to submit the changes to the Attorney General for approval. 'If, however, the Attorney General determines that the changes had no discriminatory purpose or effect, *the District Court should determine, in the exercise of its equitable discretion, whether the results of the election may stand.' Id.* 470 U.S. at 183, 105 S.Ct. at 1138.

890 F. Supp. at 550 (emphasis added). The district court for the Northern District of Mississippi also relied on *East Flatbush Election Committee v. Cuomo*, 643 F. Supp. 260, 264 (E.D.N.Y. 1986), in which a three-judge court held that "retroactive federal approval satisfies the preclearance requirements of Sec. 5." 890 F. Supp. at 550.

The Appellants cite no authority which directly supports their contention that preclearance by the United States District Court for the District of Columbia could not be given retroactive effect by the district court. Appellants also erroneously state that the United States Supreme Court suggested "that a district court's reliance on *Berry* as authority for the express adoption of the concept [of retroactive preclearance] may not have been a 'fair characterization of the holding of *Berry*.' " (Jurisdictional Statement at 22.) In doing so, the Appellants misrepresent the Supreme Court's opinion in *NAACP v. Hampton County Election Commission*, 470 U.S. 166 (1985). In that case, the United States Supreme Court did not

consider at all whether the lower court's construction of *Berry* was "a fair characterization" of its holding in that case. The United States Supreme Court gave no indication in *Hampton* that the district court's reading of *Berry* was or might be incorrect, but simply did not consider the issue. As Appellants note, in the very least, *Berry* and *Hampton* stand for the proposition that "after-the-fact preclearance is a matter for the district court to consider in determining the appropriate remedy for a violation of § 5." (Jurisdictional Statement at 22.)

In accordance with *Berry, Hampton, Moore v. Caledonia Natural Gas District,* and *East Flatbush,* it was appropriate for the district court to consider giving retroactive effect to potential preclearance by the district court for the District of Columbia. Indeed, as Appellants noted, "[i]n *Berry v. Doles,* . . . the Court entered an order ***directing*** the district court to require the State to submit a voting change for preclearance within 30 days. 'If approval is obtained, the matter will be at an end. . . . [438 U.S.] at 192-93.' " (Jurisdictional Statement at 22) (emphasis added). Appellants' position that retroactive effect of preclearance is not recognized in voting rights jurisprudence is misplaced.

Subsequent to the district court's issuance of the stay in the instant action, this Court handed down its decision in *Lopez v. Monterey County,* 117 S. Ct. 340, 65 U.S.L.W. 4003 (Nov. 6, 1996). In that case, this Court reversed the decision of the United States District Court for the Northern District of California ordering judicial elections under a plan which it knew had not been precleared under § 5. That case, however, is distinguishable from the instant case for several reasons.

First, in *Lopez*, this Court stated:

> In *Clark [v. Roemer*, 500 U.S. 646 (1991)], we left open the question whether a district court may ever deny a § 5 plaintiff's motion for an injunction and allow a covered jurisdiction to conduct an election under an unprecleared voting plan. We suggested that '[a]n extreme circumstance might be present if a seat's unprecleared status is not drawn to the attention of the [covered jurisdiction] ***until the eve of the election and there are equitable principles that justify allowing the election to proceed.***' *Id.*, at 654-655, 111 S.Ct., at 2102. We found no such exigency to exist in *Clark*, and we find none here.

(Emphasis added.) In the instant case, the district court was faced with a situation in which school district lines statewide would be moved on the eve of an upcoming school year, creating a financial and administrative nightmare for school districts across the state. Whole schools would transfer from one district to another; alarming shifts in school tax bases would occur; some districts would be without school buildings for some grades; the employment status of teachers and principals would be up in the air; student transportation would be in upheaval. (*See* Appellees' App. at 6a-28a.) The district court properly found that equitable principles dictated staying its injunction. Unlike *Lopez*, the requisite exigencies existed in the instant case.

Secondly, this court in *Lopez* stated:

> We acknowledged in *Clark* that earlier decisions such as *Perkins v. Matthews* . . . and *Berry v. Doles* . . . held that where a covered jurisdiction had already conducted elections under an

> unprecleared plan, it might be appropriate for the district court to afford local officials an opportunity to seek federal approval before ordering a new election. 500 U.S., at 654, 111 S.Ct., at 2102. But those cases raised an issue different from the one in *Clark*. In *Perkins* and *Berry*, the district courts confronted the question whether to set aside illegal elections that had already taken place. By contrast, the district court in *Clark* had to decide whether to allow illegal elections to go forward in the first place. In this situation, '§ 5's prohibition against implementation of unprecleared changes required the district court to enjoin the election.' 500 U.S., at 654, 111 S.Ct., at 2102.

In the case now before this Court, the annexations in question have already taken place statewide. The district court, in granting its stay, did not order the occurrence of an event which was to take place in the future, knowing the event would violate § 5, as was the case in *Lopez*. It merely allowed the status quo to remain in effect pending ultimate disposition of this matter in order to avoid havoc in the Mississippi school system.

Thirdly, in *Lopez*, there was no pending action to obtain preclearance of the subject elections. In *Lopez*, this Court noted that the county had filed a declaratory judgment in the United States District Court for the District of Columbia, seeking judicial preclearance of the challenged ordinances, "[b]ut before that court made any findings, the County voluntarily dismissed its action, without prejudice. The County and appellants subsequently stipulated that the County was 'unable to establish that the [consolidation ordinances] adopted by the County between 1968 and 1983 did not have the effect of denying

the right to vote to Latinos in Monterey County due to the retrogressive affect several of these ordinances had on Latino voting strength.' " In other words, in *Lopez*, the district court knew that the plan under which it ordered elections had the purpose or effect of discrimination and there was no pending proceeding under which the statutes in question might be precleared. In the instant case, on the other hand, there is a declaratory judgment action pending in the district court of the District of Columbia which, if the State is successful, will preclear the statutes in question and obviate the need for massive upheaval of the educational system in Mississippi.

As a result, the equitable considerations which the court found to be absent in *Lopez* certainly exist in the instant case.

II. THE DISTRICT COURT ACTED ON UNIQUE, LOCAL CIRCUMSTANCES, AND THE POTENTIAL IMPACT OF THIS CASE ON OTHER VOTING RIGHTS ACT CASES IS NOT SIGNIFICANT ENOUGH TO WARRANT FURTHER REVIEW.

Having established that the district court had the authority to stay its injunction, the question then becomes whether the district court's exercise of its discretion to do so warrants further review by this Court. It has been clearly established in Voting Rights Act jurisprudence that local district courts are in a better position to fashion specific remedies for violations of § 5, taking into account the local circumstances. In *Clark v. Roemer*, 500 U.S. 646, 111 S. Ct. 2096, 114 L. Ed. 2d 691 (1991), this Court stated:

> "[A] local district court is in a better position than this Court to fashion relief, because the district court 'is more familiar with the nuances of the local situation' and has the opportunity to hear evidence." *Hathorn v. Lovorn*, 457 U.S., at 270, 102 S. Ct., at 2431, quoting *Perkins v. Matthews*, 400 U.S., at 397, 91 S. Ct., at 441. In fashioning its decree granting relief, the district court should adopt a remedy that in all the circumstances of the case implements the mandate of § 5 in the most equitable and practicable manner and with least offense to its provisions.

111 S. Ct. at 2105.

In *City of Richmond v. United States*, 376 F. Supp. 1344 (D.D.C. 1974), *vacated on other grounds*, 422 U.S. 358 (1975), the district court for the District of Columbia discussed the policy of allowing local three-judge panels to fashion relief resulting from violations of § 5 as follows:

> Though we believe we do have jurisdiction to enforce the direct command of Section 5 by enjoining the annexation in order that councilmanic elections within Richmond's old boundaries can be immediately held, we nonetheless refrain from doing so. Our restraint derives from the same considerations which we suspect ultimately underlay the *Beer I* court's decision: hesitancy 'to become involved in the intricacies of local political redistricting . . . or . . . to take over the traditional responsibility of a local court to resolve questions more conveniently litigable before its bench.' *Beer I, supra*, 374 F.Supp. at 362.

> We are particularly influenced by the Supreme Court's handling of the remedial issue in *Perkins v. Matthews, supra* [400 U.S. 379 (1971)]. Though the *Perkins* Court held that Canton, Mississippi had violated Section 5 by allowing annexed citizens to vote in its 1969 elections without obtaining prior approval from this court or the Attorney General, the Court refused to set aside the 1969 elections and order immediate new elections within Canton's old boundaries. The Court instead remanded the case to the local three-judge District Court, emphasizing that since the local court was 'more familiar with the nuances of the local situation than are we,' 'the question of the appropriate remedy is for that court to determine, in the first instance. . . . [footnote omitted] *Perkins* involved review of a local District Court's failure to require Canton to submit its changed procedures for approval, and the Supreme Court suggested that the case for ordering new elections under old procedures would be stronger if, as in our case, approval was sought and not obtained. [footnote omitted] However, we think the local District Court's familiarity 'with the nuances of the local situation' is as relevant here as in *Perkins;* we are no more aware of these nuances in our case than was the Supreme Court in *Perkins.* The local District Court can better balance all relevant factors, including our refusal to grant Richmond a declaratory judgment, in deciding whether to order de-annexation.

376 F. Supp. at 1360 (bracketed material added). It is clear the local three-judge district court is in a better position

to evaluate the appropriateness of a stay of its injunction, as recognized by this Court in *Perkins v. Matthews*, 400 U.S. 379 (1971).

The district court in the instant case, realizing it could not issue a remedy in a vacuum, considered the severe, extenuating local circumstances in deciding to stay its injunctive relief. Those extenuating circumstances are outlined not only in the affidavit of Judy Rhodes, of the State Department of Education (Appellees' App. at 6a), but also in affidavits of other local school and taxing officials (Appellees' App. at 63a-75a.) The district court acknowledged the effect that local circumstances can have on the remedy in a Voting Rights Act case when it stated, "[i]t goes without saying both that the Voting Rights Act imposes drastically on a State's power to conduct its affairs, and that it has wide-ranging effects, as evidenced by the fact that, in this case, it has reached into the school rooms of Mississippi. *City of Rome v. United States*, 446 U.S. 156, 179 (1980)." (Appellants' App. at A-14.)

In determining that the irreparable harm resulting from the injunction outweighed any harm which others might suffer if the injunction were stayed, the district court stated:

> Our second reason for the stay is to prevent the disruption that would occur if our rulings were implemented and the District of Columbia court later granted judgment for the State. Moreover, until the Supreme Court reached its decision approximately two months ago, no steps had been taken to implement our rulings. (Indeed, we unanimously granted a stay pending appeal to the Supreme Court. That stay

ended when the Supreme Court ruled on June 10.)

The 1996-97 school year is about to begin. And, because annexations have occurred involving school districts in addition to those involved in this action, our rulings likely will impact other districts and have the potential to spawn further litigation involving them. If, as a result of implementation of our rulings, municipal school districts expand into annexed territory currently under the control of county school districts, and the State is successful in the District of Columbia, then questions such as the return of property to the county school districts will result in further disruptions.

Along that line, when implementing our rulings, their impact on the non-voting aspects of the affected statutes must be considered. Although § 5, which is our sole authority for enjoining the enforcement of the state laws in issue, covers only changes in voting, §§ 47 and 52 of the Uniform School Law are not addressed solely to voting; in fact, their impact on voting is minimal in comparison to their impact on students, teachers, school district boundary lines, and tax bases.

(Appellants' App. at A-15.)[4]

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[4] In *United States v. Baylor Univ. Medical Ctr.*, 711 F.2d 38 (5th Cir. 1983), the Fifth Circuit noted that a movant seeking a stay "need only present a substantial case on the merits when a serious legal question is involved and show that the balance of equities weighs heavily in favor of granting the stay." 711 F.2d at 39 (quoting *Ruiz v. Estelle*, 650 F.2d 555, 565 (5th Cir. 1981)).

The instant case involves a district court's exercise of its discretion to consider local circumstances in fashioning a remedy in a Voting Rights Act case. This fact situation is consistent with other situations in which this Court has allowed a local three-judge district court to exercise its discretion in fashioning and overseeing remedies for violations of § 5. Indeed, the havoc which would have resulted in Mississippi schools on the eve of a new school year could not be ignored by the district court. Unlike *Lopez*, the circumstances in the instant case were severe. Those local circumstances are unique and will have no far-reaching implications for the Voting Rights Act nationwide. If the Appellants' attempts to vacate the stay are successful, the harm avoided by the district court will occur – only this time, it will occur in the middle of a school year.

CONCLUSION

For the foregoing reasons, this appeal should be dismissed or, alternatively, the decision of the district court should be affirmed.

Respectfully submitted,

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December 2, 1996

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION

JOHNNY DUPREE, et al. PLAINTIFFS

vs. Civil Action No. H90-0043(W)

MIKE MOORE, et al. DEFENDANTS

STATE DEFENDANTS' EMERGENCY MOTION FOR STAY

State defendants, Attorney General Mike Moore and the State of Mississippi, through counsel, move this Court to enter its order staying orders previously entered herein, and in support show the following:

1. On August 27, 1993, and December 29, 1995, this Court entered orders which rendered the legislative repeal of Miss. Code Ann. §37-7-611 ineffective. The Supreme Court's summary affirmance of the December 29 order makes these rulings final.

2. The effect of these rulings will have a statewide impact on every school district, both city and county, located near territory which has been annexed since 1986, except in those counties that have a consolidated school district.

3. Since passage of the Mississippi Uniform School Law of 1986 (the Act), a substantial number of municipal annexations have taken place within the State of Mississippi. Each of those annexations was accomplished either with the understanding that city school district lines would not expand with the municipal corporation district

lines, or with agreements, pursuant to §52 of the Act, between city and county school districts regarding the placement of boundary lines in light of the annexations.

4. This Court's rulings have removed both foundations of understanding which underpinned these annexations. The repeal of the "lockstep" provision, §47 of the Act, was rendered ineffective by the August 27 ruling. The statutory basis for the inter-district agreements was §52 of the Act (Miss. Code Ann. §37-7-103). This provision was rendered ineffective by the December 29 ruling.

5. The effect of the implementation of the Court's rulings will be to cede territory, taxbase, and students from county school districts to city school districts in every district affected by those annexations notwithstanding that this result was never intended by the legislature and notwithstanding the fact that the people and institutions affected by these annexations acted with the understanding that this result would not obtain.

6. Besides the general inequity of causing a result no one foresaw or intended, the decisions will cause positive harm to schoolchildren in school districts throughout the State. Attached hereto as exhibit "A" is the affidavit of Judy Rhodes. Ms. Rhodes' affidavit, together with its exhibits, quantifies the financial dislocations that will occur in the limited number of districts where information is presently available. Her affidavit also sets forth some of the physical and logistical difficulties that will result to school districts. The sum total of the information in this affidavit is that some schoolchildren will be helped by these rulings, but many schoolchildren will suffer. Aid to some students does not

offset harm to others. Nothing will offset the harm that will result to schoolchildren in those school districts throughout the State which will be adversely affected.

7. The statutes addressed in the decisions were rendered invalid on a technicality. The State defendants believed in good faith that the necessary preclearance had been obtained. This Court originally had the same view. Only an intervening Supreme Court decision in a different case caused a contrary result. There was, and is, nothing in the statutes that had the purpose or effect of denying or abridging the right of anyone to vote on account of race or color. The reforms embodied in the statutes were proposed by Governor William Winter and shepherded through the legislature by then chairman of the House Education Committee, Robert Clark. Because the statutes reflect sound, non-discriminatory public policy, the statutes have now been submitted in a declaratory judgment action to the District Court for the District of Columbia for preclearance. A copy of the Complaint in that proceeding is attached hereto as exhibit "B".

8. The movants believe that the declaratory judgment action is meritorious. The Attorney General's objection to §47 was based on impermissible, and incorrect, educational issues, and was based on the assertion that adding presumbably white voters from newly annexed territory would have a dilutive affect on city elections. This was asserted as a ground for the objection notwithstanding the fact that the Attorney General has the power, through Section 5 review of annexations themselves, to prevent dilutive annexations from occuring in the first place.

9. The movants represent to this Court that the Mississippi Legislature is fully cognizant of the impending crisis the decisions will cause and that the chairmen of the House and Senate Education Committees have recently convened meetings of their committees to discuss the circumstance and to begin the search for possible legislative solutions.

10. It is patently unjust for the outlined untoward results to flow merely on account of the technical failing of the State's preclearance effort. The harshness of this result would not be warranted even had the State intentionally committed some grievous wrong.

11. Because of the severity of the result of the decisions, and because the declaratory judgment action may yet establish the validity of the statutes, and because the possible legislative solutions cannot be adopted until the 1997 session begins in January, 1997, this Court should enter its order staying the effect of its prior decisions until these attempts to address the issues created by this Court's decisions have been exhausted.

12. In the event the Court does not grant a stay, the changes and injuries set forth herein will occur. In the further event that the movants' declaratory judgment action is successful, the State's school districts will again undergo transformation, with attendant dislocations, when the provisions of the Uniform School Law are restored by gaining preclearance from the District Court in the District of Columbia, *cf, Berry vs. Doles*, 438 U.S. 190 (1978).

13. Unless the relief sought by this motion is granted expeditiously the motion will be moot. As set

forth in Ms. Rhodes' affidavit, the school year begins as early as August 12, 1996. Without a stay the harm sought to be prevented hereby will begin with the school year.

14. The damage to the plaintiff outlined in this motion is irreparable. The stay sought hereby will not prejudice the plaintiffs. At worst for the plaintiffs, a stay would delay the receipt of a financial windfall never intended by the legislature or expected by the plaintiffs at the time of the annexations affecting the Hattiesburg area. The stay requested is clearly in the public interest.

WHEREFORE, the State defendants move this Court to enter its order staying the implementation of its decisions of August 27, 1993, and December 29, 1995, until further order of this Court.

Respectfully submitted,

MIKE MOORE,
ATTORNEY GENERAL,
AND THE STATE OF MISSISSIPPI

by: MIKE MOORE
ATTORNEY GENERAL

by: /s/ Robert E. Sanders
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EXHIBIT "A"

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION

JOHNNY DUPREE, et al. PLAINTIFFS

vs. Civil Action No. H90-0043 (W)

MIKE MOORE, et al. DEFENDANTS

AFFIDAVIT OF JUDY RHODES

STATE OF MISSISSIPPI
COUNTY OF HINDS

PERSONALLY APPEARED BEFORE ME, the undersigned authority for the jurisdiction aforesaid, JUDY RHODES, who, having been by me first duly sworn, stated on her oath the following:

1. My name is Judy Rhodes. I am the Director of Educational Accountability with the Mississippi Department of Education. In this capacity I oversee the responsibilities of the Bureau of School Support and the Bureau of the Budget.

2. The Bureau of School Support is the office which collects and compiles financial data from every public school district in the State. The Bureau of the Budget controls the flow of equity funding monies to school districts.

3. The information set out in this affidavit, and in the exhibits attached hereto, is derived largely from records maintained in these bureaus. The financial numbers set out below and in the exhibit to this affidavit

contain estimates provided by school districts. These figures have not been validated by local taxing authorities. The numbers reflecting changes in assessed value and changes in student population are subject to modification as updated data is received. On the other hand, these figures reflect the best information available on a statewide basis, and reflect information that the Department of Education considers reliable enough to utilize in planning.

4. I have personal knowledge of the matters set forth in this affidavit.

5. The invalidation of §47 and §52 of the Mississippi Uniform School Law of 1986 will cause a number of serious problems in the financing of public schools and in the administration of public schools in the State.

6. One of the most serious problems will be the fact that the ad valorem tax base for some school districts affected by a municipal annexations within the last ten years will be immediately reduced. These reductions will occur without an opportunity for planning or budgeting for the school year which begins as early as August 12, 1996, in some school districts. The process of preparing budgets usually takes two or three months and the budgets must be filed with the local taxing authorities by July 15, 1996.

7. The net effect of Municipal annexations over the last ten years is to transfer tax base and students from one school district to another school district. These transfers are, however, severely disproportionate. The result of the transfers is to significantly change the assessed valuation per child between the affected school districts. The

assessed valuation per child is reduced in some school districts and raised in other school districts.

8. The Department of Education has not yet compiled information regarding the effect the changes will have on all districts which have been affected by annexation since 1986. The attached exhibit "A" reflects information on some school districts which have been affected by such annexations and for which numbers are available. The figures reflected in this exhibit will result unless the adversely affected school districts elect to maintain their present budgets by increasing millage on their reduced tax base. In some cases the increase in millage would be significant.

9. Exhibit "A" reflects, among other items, changes in assessed valuation per child and ad valorem revenue per child in areas where annexations have been accomplished and where financial data is available. The revenue per child figures assume a stable tax levy. Exhibit "B" reflects the effect that pending annexations will have in Tupelo/Lee and Jackson/Hinds if those annexations gain final approval. Some pertinent data from these exhibits are summarized below:

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

District	Assessed Valuation Per Child	Ad Valorem Revenue Per Child
Forrest	(-) $582	(-) $28.63
Lamar	(-) $4,584	(-) $143.29
Hattiesburg	(+) $3,624	(+) $180.18
Western Line	(+) $10,396	(+) $210.53
Greenville	(-) $796	(-) $40.45
Prentiss	(-) $232	(-) $10.07
Booneville	(-) $804	(-) $27.64
Alcorn	(+) $849	(+) $27.05
Corinth	(-) $1,807	(-) $79.14
Harrison	(-) $12,661	(-) $423.86
Gulfport	(+) $2,035	(+) $59.81
Coahoma	(-) $2,283	(-) $67.40
Clarksdale Separate	(+) $1,578	(+) $75.47
Lee	(-) $11,224	(-) $318.39
Tupelo	(+) $6,924	(+)$210.21
Hinds	(-) $3,146	(-) $107.06
Jackson	(+) $192	(+) $9.75

10. Additionally, the available data indicates that the wealthier districts tend to gain financially at the expense of poorer districts. The data for the districts shown above reveals the following:

District	Current Assessed Value Per Child	Per Child Change	% Change
Forrest	$17,039	(-) $582	(-) 3.4%
Lamar	$17,121	(-) $4,584	(-)26.8%
Hattiesburg	$30,216	(+) $3,624	(+)12.0%
Western Line	$39,177	(+) $10,396	(+)26.5%
Greenville	$14,586	(-) $796	(-) 5.5%
Prentiss	$11,608	(-) $232	(-) 2.0%
Booneville	$18,109	(-) $804	(-) 4.4%
Alcorn	$19,851	(+) $849	(+) 4.3%
Corinth	$23,959	(-) $1,807	(-) 7.5%
Harrison	$23,965	(-) $12,661	(-)52.8%
Gulfport	$33,757	(+) $2,035	(+) 6.0%
Coahoma	$21,361	(-) $2,283	(-)10.7%
Clarksdale Separate	$9,208	(+) $1,578	(+)17.1%
Lee	$19,694	(-) $11,224	(-)57.0%
Tupelo	$35,992	(+) $6,924	(+)19.2%
Hinds	$23,987	(-) $3,146	(-)13.1%
Jackson	$29,454	(+) $192	(+)0.7%

11. In addition to these ad valorem results, there are state and federal funding consequences to these changes. State and federal funding distributions generally are based on attendance and other data from one to two years old. Consequently, state and federal funding calculated on past attendance at school districts will not fit the school districts which will exist in the upcoming school year. Accordingly, this funding will not follow the schoolchildren as intended and the full educational benefit of these funds will not be realized.

12. Many of the adversely affected school districts will not be able to maintain their previous educational standards without additional revenues.

13. In addition to these financial problems, the changes may cause problems with facilities at school districts. An example of a known problem is that the Coahoma County district's high school and junior high buildings are located on annexed territory. Potentially, the district will literally not have a building for its junior high or high school students this school year. In other situations, those districts gaining a significant number of students may not have sufficient classrooms to accommodate the new students.

14. Because annexation lines do not necessarily coincide with attendance zones a significant amount of rescheduling of transportation of students, reassignment of teachers, and reassignment of classrooms will have to be accomplished prior to the beginning of the school year. Whether these responsibilities can be met depends in large part on the willingness of enriched districts to share facilities with districts which lost facilities.

15. Due to State law requirements for executing teacher contracts, adversely affected districts may be forced to honor teacher contracts already executed for which funds will not be available, and where students will no longer be attending.

16. Teacher contracts are funded in part from State appropriations and in part from local ad valorem revenues. Due to current State funding distribution requirements, State appropriations for teachers could be significantly below those needed and would necessitate the need for a State deficit appropriation or the pro-rata reduction in funds owing to all districts in the State. This would occur because the Minimum Foundation Program requires funding at the previous year's level for those districts losing students and at the current year's level for those districts gaining students for one year.

17. And further, affiant sayeth not.

/s/ Judy Rhodes
Judy Rhodes

SWORN TO AND SUBSCRIBED before me, this 17 day of July, 1996.

/s/ Carmen Howard
NOTARY PUBLIC

My Commission Expires:

MISSISSIPPI STATEWIDE NOTARY PUBLIC
MY COMMISSION EXPIRES APRIL 24, 2000
BONDED THRU [ILLEGIBLE]

Preliminary Study of Annexation Impact on School Districts
Estimated Impact for FY 97
(Based on Information Collected by Telephone from District Superintendents)

Hattiesburg Annexation
Forrest County

	Current Level	Change	New Level	Change Req. to Maint. $ per Pupil	Estimated Impact beyond FY 97 Current Level	Change	New Level
Students FY 95 ADA (+/-):	2,446.28	(573.00)	1,873.28		2,446.28	(573.00)	1,873.28
Operational Millage:	48.76	0.00	48.76	1.75	48.76	0.00	48.76
Bond Millage:	10.63	0.00	10.63		10.63	0.00	10.63
Other Millage:	2.83	0.00	2.83		2.83	0.00	2.83
Total Millage:	62.22	0.00	62.22		62.22	0.00	62.22
Tax Base: Gross Assessed Value (+/-)	$46,095,391	($12,322,679)	$33,772,712		$46,095,391	($12,322,679)	$33,772,712
Net Assessed Value (+/-)	$41,681,752	($10,852,937)	$30,828,815		$41,681,752	($10,852,937)	$30,828,815
Net Assessed Value Per Child	$17,039	($582)	$16,457		$17,039	($582)	$16,457
Based on FY 95 Assessment Information							
Operational Ad Valorem Revenue (+/-):	$2,037,532	($530,897)	$1,506,635	$53,639	$2,037,532	($530,897)	$1,506,635
Operational Ad Valorem Revenue per Child:	$832.91	($28.63)	$804.28	$28.63	$832.91	($28.63)	$804.28
Bond Ad Valorem Revenue (+/-):	$443,077	($115,367)	$327,710	Change Req. to	$443,077	($115,367)	$327,710
Bond Ad Valorem Revenue per Child:	$181.12	($6.18)	$174.94	Equalize $ per Pupil	$181.12	($6.18)	$174.94
Other Ad Valorem Revenue (+/-):	$117,960	($30,714)	$87,246	to Wealthier Dist.	$117,960	($30,714)	$87,246
Other Ad Valorem Revenue per Child:	$48.22	($1.65)	$46.57	58.96	$48.22	($1.65)	$46.57
A) Total Ad Valorem Revenue (+/-):	$2,598,569	($676,978)	$1,921,591		$2,598,569	($676,978)	$1,921,591
Total Ad Valorem Revenue per Child:	$1,062.25	($36.46)	$1,025.79		$1,062.25	($36.46)	$1,025.79
B) Equity Funding Impact (+/-):	$471	$0	$471		$471	$49,114	$49,585
Equity Funding Impact (+/-) Per Child:	$0.19	$0.06	$0.25		$0.19	$26.28	$26.47
C) Teachers (est. +/- based on 1:25.5, avg. cost of $38,361 FY 97 est. cost)*		$0				($843,942)	
Estimated Teacher Unit Change		0				-22	
D) Education Enhancement Funds: (Includes Classroom Supplies, Textbooks, Ad Valorem Tax Reduction, Buildings & Buses FY 97 est.)**	$428,515	$0	$428,515	$1,814,391	$428,515	($100,373)	$328,142
E) General Fund Textbooks (est. at $3.75 per child)	$9,174	$0	$9,174	$968.56	$9,174	($2,149)	$7,025
Total Estimated change (A+B+C+D+E)		($676,978)				($1,574,328)	

Facilities:

Loss of Earl Travillion School (313 ADA), Curriculum Building, Bus Barn, Fire Hall.

Hattiesburg would not agree to take Forrest County teachers to go with the students.

EXHIBIT "A" TO ANDERS AFF.

Preliminary Study of Annexation Impact on School Districts
Estimated Impact for FY 97
(Based on Information Collected by Telephone from District Superintendents)

Hattiesburg Annexation
Lamar County

	Current Level	Change	New Level	Change Req. to Maint. $ per Pupil	Estimated Impact beyond FY 97 Current Level	Change	New Level
Students FY 95 ADA (+/-):	5,800.47	(60.00)	5,740.47		5,800.47	(60.00)	5,740.47
Operational Millage:	32.21	0.00	32.21	11.43	32.21	0.00	32.21
Bond Millage:	0.00	0.00	0.00		0.00	0.00	0.00
Other Millage:	0.00	0.00	0.00		0.00	0.00	0.00
Total Millage:	32.21	0.00	32.21		32.21	0.00	32.21
Tax Base: Gross Assessed Value (+/-)	$106,125,962	($28,431,954)	$77,694,008		$106,125,962	($28,431,954)	$77,694,008
Net Assessed Value (+/-)	$99,307,034	($27,340,926)	$71,966,108		$99,307,034	($27,340,926)	$71,966,108
Net Assessed Value Per Child	$17,121	($4,584)	$12,537		$17,121	($4,584)	$12,537
Based on FY 95 Assessment Information							
Operational Ad Valorem Revenue (+/-):	$3,031,475	($853,899)	$2,177,576	$822,541	$3,031,475	($853,899)	$2,177,576
Operational Ad Valorem Revenue per Child:	$522.63	($143.29)	$379.34	$143.29	$522.63	($143.29)	$379.34
Bond Ad Valorem Revenue (+/-):	$0	$0	$0	Change Req. to	$0	$0	$0
Bond Ad Valorem Revenue per Child:	$0.00	$0.00	$0.00	Equalize $ per Pupil	$0.00	$0.00	$0.00
Other Ad Valorem Revenue (+/-):	$0	$0	$0	to Wealthier Dist.	$0	$0	$0
Other Ad Valorem Revenue per Child:	$0.00	$0.00	$0.00	109.20	$0.00	$0.00	$0.00
A) Total Ad Valorem Revenue (+/-):	$3,031,475	($853,899)	$2,177,576		$3,031,475	($853,899)	$2,177,576
Total Ad Valorem Revenue per Child:	$522.63	($143.29)	$379.34		$522.63	($143.29)	$379.34
B) Equity Funding Impact (+/-):	$309,857	$0	$309,857		$309,857	$310,970	$620,827
Equity Funding Impact (+/-) Per Child:	$53.42	$0.56	$53.98		$53.42	$54.73	$108.15
C) Teachers (est. +/- based on 1:25.5, avg. cost of $38,361 FY 97 est. cost)*		$0				($76,722)	
Estimated Teacher Unit Change		0				-2	
D) Education Enhancement Funds: (Includes Classroom Supplies, Textbooks, Ad Valorem Tax Reduction, Buildings & Buses FY 97 est.)**	$1,016,068	$0	$1,016,068	$7,999,359	$1,016,068	($10,510)	$1,005,558
E) General Fund Textbooks (est. at $3.75 per child)	$21,752	$0	$21,752	$1,393.50	$21,752	($225)	$21,527
Total Estimated change (A+B+C+D+E)		($853,899)				($630,386)	

Facilities:

No facilities are located in the annexed area.

Preliminary Study of Annexation Impact on School Districts
Estimated Impact for FY 97
(Based on Information Collected by Telephone from District Superintendents)

Hattiesburg Separate	Current Level	Change	New Level	Change Req. to Maint. $ per Pupil	Current Level	Change	New Level
Students FY 95 ADA (+/-):	4,998.93	633.00	5,631.93		4,998.93	633.00	5,631.93
Operational Millage:	51.80	0.00	51.80	(5.32)	51.80	0.00	51.80
Bond Millage:	10.05	0.00	10.05		10.05	0.00	10.05
Other Millage:	0.00	0.00	0.00		0.00	0.00	0.00
Total Millage:	61.85	0.00	61.85		61.85	0.00	61.85
Tax Base: Gross Assessed Value (+/-)	$161,609,272	$40,754,633	$202,363,905		$161,609,272	$40,754,633	$202,363,905
Net Assessed Value (+/-)	$151,049,468	$39,536,155	$190,585,623		$151,049,468	$39,536,155	$190,585,623
Net Assessed Value Per Child	$30,216	$3,624	$33,840		$30,216	$3,624	$33,840
Based on FY 95 Assessment Information							
Operational Ad Valorem Revenue (+/-):	$7,961,576	$2,022,928	$9,984,504	($1,014,777)	$7,961,576	$2,022,928	$9,984,504
Operational Ad Valorem Revenue per Child:	$1,592.66	$180.18	$1,772.84	($180.18)	$1,592.66	$180.18	$1,772.84
Bond Ad Valorem Revenue (+/-):	$1,518,047	$397,339	$1,915,386		$1,518,047	$297,699	$1,815,746
Bond Ad Valorem Revenue per Child:	$303.67	$36.42	$340.09		$303.67	$18.73	$322.40
Other Ad Valorem Revenue (+/-):	$0	$0	$0		$0	$0	$0
Other Ad Valorem Revenue per Child:	$0.00	$0.00	$0.00		$0.00	$0.00	$0.00
A) Total Ad Valorem Revenue (+/-):	$9,479,623	$2,420,267	$11,899,890		$9,479,623	$2,320,627	$11,800,250
Total Ad Valorem Revenue per Child:	$1,896.33	$216.60	$2,112.93		$1,896.33	$198.91	$2,095.24
B) Equity Funding Impact (+/-):	$0	$0	$0		$0	$0	$0
Equity Funding Impact (+/-) Per Child:	$0.00	$0.00	$0.00		$0.00	$0.00	$0.00
C) Teachers (est. +/- based on 1:25.5, avg. cost of $38,361 FY 97 est. cost)*		$959,025				$959,025	
Estimated Teacher Unit Change		25				25	
D) Education Enhancement Funds: (Includes Classroom Supplies, Textbooks, Ad Valorem Tax Reduction, Buildings & Buses FY 97 est.)**	$875,663	$0	$875,663		$875,663	$110,882	$986,545
E) General Fund Textbooks (est. at $3.75 per child)	$18,746	$0	$18,746		$18,746	$2,374	$21,120
Total Estimated change (A+B+C+D+E)		$3,379,292				$3,392,908	

Facilities:
Gain Earl Travillion School (313 ADA), Curriculum Building, Bus Barn, Fire Hall.

Other items to be considered:
What happens if the annexing district does not get sufficient facilities to house the influx of new students?
What would happen to current debt associated with annexed property?
What would happen to the buildings and buses Enhancement funds if they are pledged to debt?
What would happen to existing buses in districts which are losing students?
What would happen with teacher contracts if the change were to occur July 1, 1996?

* Assumes all students in the annexed area would remain in the public schools.
** Buildings & Buses funding may not change if it is committed to debt service. Transportation is not estimated as the density of all districts involved in the annexation will change and cannot be estimated at this time.
No funds are included for Voc. Ed., Federal, and Other Local (Sixteenth Section, TVA, National Forest, Interest, etc.)

Preliminary Study of Annexation Impact on School Districts
Estimated Impact for FY 97
(Based on Information Collected by Telephone from District Superintendents)

Greenville Annexation Western Line School District	Current Level	Change	New Level	Change Req. to Maint. $ per Pupil	Estimated Impact beyond FY 97 Current Level	Change	New Level
Students FY 95 ADA (+/-):	2,145.91	(450.00)	1,695.91		2,145.91	(450.00)	1,695.91
Operational Millage:	20.61	0.00	20.61	(4.25)	20.61	0.00	20.61
Bond Millage:	0.00	0.00	0.00		0.00	0.00	0.00
Other Millage:	2.06	0.00	2.06		2.06	0.00	2.06
Total Millage:	22.67	0.00	22.67		22.67	0.00	22.67
Tax Base: Gross Assessed Value (+/-)	$86,176,024	Minor Impact	$86,176,024		$86,176,024	Minor Impact	$86,176,024
Net Assessed Value (+/-)	$84,070,701	$0	$84,070,701		$84,070,701	$0	$84,070,701
Net Assessed Value Per Child	$39,177	$10,396	$49,573		$39,177	$10,396	$49,573
Based on FY 95 Assessment Information							
Operational Ad Valorem Revenue (+/-):	$1,702,648	Minor Impact	$1,702,648	($357,047)	$1,702,648	Minor Impact	$1,702,648
Operational Ad Valorem Revenue per Child:	$793.44	$210.53	$1,003.97	($210.53)	$793.44	$210.53	$1,003.97
Bond Ad Valorem Revenue (+/-):	$0	$0	$0		$0	$0	$0
Bond Ad Valorem Revenue per Child:	$0.00	$0.00	$0.00		$0.00	$0.00	$0.00
Other Ad Valorem Revenue (+/-):	$173,186	$0	$173,186		$173,186	$0	$173,186
Other Ad Valorem Revenue per Child:	$80.71	$21.41	$102.12		$80.71	$21.41	$102.12
A) Total Ad Valorem Revenue (+/-):	$1,875,834	$0	$1,875,834		$1,875,834	$0	$1,875,834
Total Ad Valorem Revenue per Child:	$874.14	$231.95	$1,106.09		$874.14	$231.95	$1,106.09
B) Equity Funding Impact (+/-):	$0	$0	$0		$0	$0	$0
Equity Funding Impact (+/-) Per Child:	$0.00	$0.00	$0.00		$0.00	$0.00	$0.00
C) Teachers (est. +/- based on 1:25.5, avg. cost of $36,361 FY 97 est. cost)*		$0				($690,498)	
Estimated Teacher Unit Change		0				-18	
D) Education Enhancement Funds: (Includes Classroom Supplies, Textbooks, Ad Valorem Tax Reduction, Buildings & Buses FY 97 est.)**	$375,899	($10)	$375,889		$375,899	($78,826)	$297,073
E) General Fund Textbooks (est. at $3.75 per child)	$8,047	$0	$8,047		$8,047	($1,687)	$6,360
Total Estimated change (A+B+C+D+E)		($10)				($771,011)	

Facilities:

No facilities are located in the annexed area.

Preliminary Study of Annexation Impact on School Districts
Estimated Impact for FY 97
(Based on Information Collected by Telephone from District Superintendents)

Greenville Separate	Current Level	Change	New Level	Change Req. to Maint. $ per Pupil	Estimated Impact beyond FY 97 Current Level	Change	New Level
Students FY 95 ADA (+/-):	7,795.08	450.00	8,245.08		7,795.08	450.00	8,245.08
Operational Millage:	49.50	0.00	49.50	2.93	49.50	0.00	49.50
Bond Millage:	2.30	0.00	2.30		2.30	0.00	2.30
Other Millage:	4.15	0.00	4.15		4.15	0.00	4.15
Total Millage:	55.95	0.00	55.95		55.95	0.00	55.95
Tax Base: Gross Assessed Value (+/-)	$123,398,064	Minor Impact	$123,398,064		$123,398,064	Minor Impact	$123,398,064
Net Assessed Value (+/-)	$113,695,561	$0	$113,695,561		$113,695,561	$0	$113,695,561
Net Assessed Value Per Child	$14,586	($796)	$13,790		$14,586	($796)	$13,790
Based on FY 95 Assessment Information							
Operational Ad Valorem Revenue (+/-):	$5,777,552	Minor Impact	$5,777,552	$333,531	$5,777,552	Minor Impact	$5,777,552
Operational Ad Valorem Revenue per Child:	$741.18	($40.45)	$700.73	$40.45	$741.18	($40.45)	$700.73
Bond Ad Valorem Revenue (+/-):	$261,500	$0	$261,500	Change Req. to	$261,500	$0	$261,500
Bond Ad Valorem Revenue per Child:	$33.55	($1.83)	$31.72	Equalize $ per Pupil	$33.55	($1.83)	$31.72
Other Ad Valorem Revenue (+/-):	$471,836	$0	$471,836	to Wealthier Dist.	$471,836	$0	$471,836
Other Ad Valorem Revenue per Child:	$60.53	($3.30)	$57.23	23.31	$60.53	($3.30)	$57.23
A) Total Ad Valorem Revenue (+/-):	$6,510,888	$0	$6,510,888		$6,510,888	$0	$6,510,888
Total Ad Valorem Revenue per Child:	$835.26	($45.59)	$789.67		$835.26	($45.59)	$789.67
B) Equity Funding Impact (+/-):	$1,703,826	$0	$1,703,826		$1,703,826	$194,763	$1,898,589
Equity Funding Impact (+/-) Per Child:	$218.58	($11.93)	$206.65		$218.58	$11.69	$230.27
C) Teachers (est. +/- based on 1:25.5, avg. cost of $38,361 FY 97 est. cost)*		$690,498				$690,498	
Estimated Teacher Unit Change		18				18	
D) Education Enhancement Funds: (Includes Classroom Supplies, Textbooks, Ad Valorem Tax Reduction, Buildings & Buses FY 97 est.)**	$1,365,464	$0	$1,365,464	$2,500,261	$1,365,464	$78,827	$1,444,291
E) General Fund Textbooks (est. at $3.75 per child)	$29,232	$0	$29,232	$303.24	$29,232	$1,687	$30,919
Total Estimated change (A+B+C+D+E)		$690,498				$965,775	

Facilities:

No facilities are located in the annexed area.

Other items to be considered:

What happens if the annexing district does not get sufficient facilities to house the influx of new students?
What would happen to current debt associated with annexed property?
What would happen to the buildings and buses Enhancement funds if they are pledged to debt?
What would happen to existing buses in districts which are losing students?
What would happen with teacher contracts if the change were to occur July 1, 1996?

* Assumes all students in the annexed area would remain in the public schools.
** Buildings & Buses funding may not change if it is committed to debt service. Transportation is not estimated as the density of all districts involved in the annexation will change and cannot be estimated at this time.
No funds are included for Voc. Ed., Federal, and Other Local (Sixteenth Section, TVA, National Forest, Interest, etc.)

Preliminary Study of Annexation Impact on School Districts
Estimated Impact for FY 97
(Based on Information Collected by Telephone from District Superintendents)

Booneville Annexation
Prentiss County

	Current Level	Change	New Level	Change Req. to Maint. $ per Pupil	Estimated Impact beyond FY 97 Current Level	Change	New Level
Students FY 95 ADA (+/-):	2,534.87	(249.00)	2,285.87		2,534.87	(249.00)	2,285.87
Operational Millage:	42.00	0.00	42.00	0.88	42.00	0.00	42.00
Bond Millage:	0.00	0.00	0.00		0.00	0.00	0.00
Other Millage:	3.00	0.00	3.00		3.00	0.00	3.00
Total Millage:	45.00	0.00	45.00		45.00	0.00	45.00
Tax Base: Gross Assessed Value (+/-)	$34,248,291	($4,000,000)	$30,248,291		$34,248,291	($4,000,000)	$30,248,291
Net Assessed Value (+/-)	$29,425,775	($3,421,298)	$26,004,477		$29,425,775	($3,421,298)	$26,004,477
Net Assessed Value Per Child	$11,608	($232)	$11,376		$11,608	($232)	$11,376
Based on FY 95 Assessment Information							
Operational Ad Valorem Revenue (+/-):	$1,268,812	($147,646)	$1,121,166	$23,011	$1,268,812	($147,646)	$1,121,166
Operational Ad Valorem Revenue per Child:	$500.54	($10.07)	$490.48	$10.07	$500.54	($10.07)	$490.48
Bond Ad Valorem Revenue (+/-):	$0	$0	$0	Change Req. to	$0	$0	$0
Bond Ad Valorem Revenue per Child:	$0.00	$0.00	$0.00	Equalize $ per Pupil	$0.00	$0.00	$0.00
Other Ad Valorem Revenue (+/-):	$88,277	($10,264)	$78,013	to Wealthier Dist.	$88,277	($10,264)	$78,013
Other Ad Valorem Revenue per Child:	$34.83	($0.70)	$34.13	6.13	$34.83	($0.70)	$34.13
A) Total Ad Valorem Revenue (+/-):	$1,357,089	($157,910)	$1,199,179		$1,357,089	($157,910)	$1,199,179
Total Ad Valorem Revenue per Child:	$535.37	($10.76)	$524.61		$535.37	($10.76)	$524.61
B) Equity Funding Impact (+/-):	$523,303	$0	$523,303		$523,303	($92,276)	$431,027
Equity Funding Impact (+/-) Per Child:	$206.44	$22.49	$228.93		$206.44	($17.88)	$188.56
C) Teachers (est. +/- based on 1:25.5, avg. cost of $38,361 FY 97 est. cost)*		$0				($383,610)	
Estimated Teacher Unit Change		0				-10	
D) Education Enhancement Funds: (Includes Classroom Supplies, Textbooks, Ad Valorem Tax Reduction, Buildings & Buses FY 97 est.)**	$444,033	$0	$444,033	$130,439	$444,033	($43,617)	$400,416
E) General Fund Textbooks (est. at $3.75 per child)	$9,506	$0	$9,506	$57.06	$9,506	($934)	$8,572
Total Estimated change (A+B+C+D+E)		($157,910)				($678,347)	

Facilities:

No facilities are located in the annexed area.

Preliminary Study of Annexation Impact on School Districts
Estimated Impact for FY 97
(Based on Information Collected by Telephone from District Superintendents)

Booneville Separate	Current Level	Change	New Level	Change Req. to Maint. $ per Pupil	Estimated Impact beyond FY 97 Current Level	Change	New Level
Students FY 95 ADA (+/-):	1,104.93	249.00	1,353.93		1,104.93	249.00	1,353.93
Operational Millage:	29.77	0.00	29.77	1.60	29.77	0.00	29.77
Bond Millage:	13.18	0.00	13.18		13.18	0.00	13.18
Other Millage:	4.41	0.00	4.41		4.41	0.00	4.41
Total Millage:	47.36	0.00	47.36		47.36	0.00	47.36
Tax Base: Gross Assessed Value (+/-)	$22,150,206	$4,000,000	$26,150,206		$22,150,206	$4,000,000	$26,150,206
Net Assessed Value (+/-)	$20,008,849	$3,421,298	$23,430,147		$20,008,849	$3,421,298	$23,430,147
Net Assessed Value Per Child	$18,109	($804)	$17,305		$18,109	($804)	$17,305
Based on FY 95 Assessment Information							
Operational Ad Valorem Revenue (+/-):	$635,531	$105,803	$741,334	$37,416	$635,531	$105,803	$741,334
Operational Ad Valorem Revenue per Child:	$575.18	($27.64)	$547.54	$27.64	$575.18	($27.64)	$547.54
Bond Ad Valorem Revenue (+/-):	$263,717	$45,092	$308,809		$263,717	$45,092	$308,809
Bond Ad Valorem Revenue per Child:	$238.67	($10.59)	$228.08		$238.67	($10.59)	$228.08
Other Ad Valorem Revenue (+/-):	$88,239	$15,089	$103,328		$88,239	$15,089	$103,328
Other Ad Valorem Revenue per Child:	$79.86	($3.54)	$76.32		$79.86	($3.54)	$76.32
A) Total Ad Valorem Revenue (+/-):	$987,487	$165,984	$1,153,471		$987,487	$165,984	$1,153,471
Total Ad Valorem Revenue per Child:	$893.71	($41.77)	$851.94		$893.71	($41.77)	$851.94
B) Equity Funding Impact (+/-):	$0	$0	$0		$0	$19,757	$19,757
Equity Funding Impact (+/-) Per Child:	$0.00	$0.00	$0.00		$0.00	$14.59	$14.59
C) Teachers (est. +/- based on 1:25.5, avg. cost of $38,361 FY 97 est. cost)*		$383,610				$383,610	
Estimated Teacher Unit Change		.10				10	
D) Education Enhancement Funds: (Includes Classroom Supplies, Textbooks, Ad Valorem Tax Reduction, Buildings & Buses FY 97 est.)**	$193,551	$0	$193,551		$193,551	$43,617	$237,168
E) General Fund Textbooks (est. at $3.75 per child)	$4,143	$0	$4,143		$4,143	$934	$5,077
Total Estimated change (A+B+C+D+E)		$549,594				$613,902	

Facilities:

No facilities are located in the annexed area.

Other items to be considered:

What happens if the annexing district does not get sufficient facilities to house the influx of new students?
What would happen to current debt associated with annexed property?
What would happen to the buildings and buses Enhancement funds if they are pledged to debt?
What would happen to existing buses in districts which are losing students?
What would happen with teacher contracts if the change were to occur July 1, 1996?

* Assumes all students in the annexed area would remain in the public schools.
** Buildings & Buses funding may not change if it is committed to debt service. Transportation is not estimated as the density of all districts involved in the annexation will change and cannot be estimated at this time.
No funds are included for Voc. Ed., Federal, and Other Local (Sixteenth Section, TVA, National Forest, Interest, etc.)

Preliminary Study of Annexation Impact on School Districts
Estimated Impact for FY 97
(Based on Information Collected by Telephone from District Superintendents)

Corinth Annexation
Alcorn County

	Current Level	Change	New Level	Change Req. to Maint. $ per Pupil	Estimated Impact beyond FY 97 Current Level	Change	New Level
Students FY 95 ADA (+/-):	3,656.53	(150.00)	3,506.53		3,656.53	(150.00)	3,506.53
Operational Millage:	33.04	0.00	33.04	(1.31)	33.04	0.00	33.04
Bond Millage:	0.00	0.00	0.00		0.00	0.00	0.00
Other Millage:	0.73	0.00	0.73		0.73	0.00	0.73
Total Millage:	33.77	0.00	33.77		33.77	0.00	33.77
Tax Base: Gross Assessed Value (+/-)	$78,148,678	Minor Impact	$78,148,678		$78,148,678	Minor Impact	$78,148,678
Net Assessed Value (+/-)	$72,584,207	$0	$72,584,207		$72,584,207	($4,000)	$72,580,207
Net Assessed Value Per Child	$19,851	$849	$20,700		$19,851	$848	$20,699
Based on FY 95 Assessment Information							
Operational Ad Valorem Revenue (+/-):	$2,312,106	Minor Impact	$2,312,106	($94,848)	$2,312,106	Minor Impact	$2,312,106
Operational Ad Valorem Revenue per Child:	$632.32	$27.05	$659.37	($27.05)	$632.32	$27.05	$659.37
Bond Ad Valorem Revenue (+/-):	$0	$0	$0	Change Req. to	$0	$0	$0
Bond Ad Valorem Revenue per Child:	$0.00	$0.00	$0.00	Equalize $ per Pupil	$0.00	$0.00	$0.00
Other Ad Valorem Revenue (+/-):	$52,987	$0	$52,987	to Wealthier Dist.	$52,987	$0	$52,987
Other Ad Valorem Revenue per Child:	$14.49	$0.62	$15.11	13.85	$14.49	$0.62	$15.11
A) Total Ad Valorem Revenue (+/-):	$2,365,093	$0	$2,365,093		$2,365,093	$0	$2,365,093
Total Ad Valorem Revenue per Child:	$646.81	$27.67	$674.48		$646.81	$27.67	$674.48
B) Equity Funding Impact (+/-):	$0	$0	$0		$0	$0	$0
Equity Funding Impact (+/-) Per Child:	$0.00	$0.00	$0.00		$0.00	$0.00	$0.00
C) Teachers (est. +/- based on 1:25.5, avg. cost of $38,361 FY 97 est. cost)*		$0				($230,166)	
Estimated Teacher Unit Change		0				-6	
D) Education Enhancement Funds: (Includes Classroom Supplies, Textbooks, Ad Valorem Tax Reduction, Buildings & Buses FY 97 est.)**	$640,514	$0	$640,514	$1,091,227	$640,514	($26,275)	$614,239
E) General Fund Textbooks (est. at $3.75 per child)	$13,712	$0	$13,712	$311.20	$13,712	($563)	$13,149
Total Estimated change (A+B+C+D+E)		$0				($257,004)	

Facilities:

No facilities are located in the annexed area.

The original estimate of ad valorem impact was $150,000, this was reduced to $15,000 when the City agreed to reduce the area to be annexed to a small portion of the county.
The county plans to use the transfer section in the MS. Code to allow people to choose to continue attending the County Schools.

Preliminary Study of Annexation Impact on School Districts
Estimated Impact for FY 97
(Based on Information Collected by Telephone from District Superintendents)

Corinth Separate	Current Level	Change	New Level	Change Req. to Maint. $ per Pupil	Estimated Impact beyond FY 97 Current Level	Change	New Level
Students FY 95 ADA (+/-):	1,839.64	150.00	1,989.64		1,839.64	150.00	1,989.64
Operational Millage:	42.70	0.00	42.70	3.57	42.70	0.00	42.70
Bond Millage:	15.20	0.00	15.20		15.20	0.00	15.20
Other Millage:	4.00	0.00	4.00		4.00	0.00	4.00
Total Millage:	61.90	0.00	61.90		61.90	0.00	61.90
Tax Base: Gross Assessed Value (+/-)	$48,743,439	Minor Impact	$48,743,439		$48,743,439	Minor Impact	$48,743,439
Net Assessed Value (+/-)	$44,075,142	$0	$44,075,142		$44,075,142	$0	$44,075,142
Net Assessed Value Per Child	$23,959	($1,807)	$22,152		$23,959	($1,807)	$22,152
Based on FY 95 Assessment Information							
Operational Ad Valorem Revenue (+/-):	$1,931,079	Minor Impact	$1,931,079	$157,456	$1,931,079	Minor Impact	$1,931,079
Operational Ad Valorem Revenue per Child:	$1,049.70	($79.14)	$970.57	$79.14	$1,049.70	($79.14)	$970.57
Bond Ad Valorem Revenue (+/-):	$669,942	$0	$669,942		$669,942	$0	$669,942
Bond Ad Valorem Revenue per Child:	$364.17	($27.45)	$336.72		$364.17	($27.45)	$336.72
Other Ad Valorem Revenue (+/-):	$176,300	$0	$176,300		$176,300	$0	$176,300
Other Ad Valorem Revenue per Child:	$95.83	($7.22)	$88.61		$95.83	($7.22)	$88.61
A) Total Ad Valorem Revenue (+/-):	$2,777,321	$0	$2,777,321		$2,777,321	$0	$2,777,321
Total Ad Valorem Revenue per Child:	$1,509.71	($113.82)	$1,395.89		$1,509.71	($113.82)	$1,395.89
B) Equity Funding Impact (+/-):	$523	$0	$523		$523	$0	$523
Equity Funding Impact (+/-) Per Child:	$0.28	($0.02)	$0.26		$0.28	($0.02)	$0.26
C) Teachers (est. +/- based on 1:25.5, avg. cost of $38,361 FY 97 est. cost)*		$230,166				$230,166	
Estimated Teacher Unit Change		6				6	
D) Education Enhancement Funds: (Includes Classroom Supplies, Textbooks, Ad Valorem Tax Reduction, Buildings & Buses FY 97 est.)**	$322,250	$0	$322,250		$322,250	$26,275	$348,525
E) General Fund Textbooks (est. at $3.75 per child)	$6,899	$0	$6,899		$6,899	$562	$7,461
Total Estimated change (A+B+C+D+E)		$230,166				$257,003	

Facilities:

No facilities are located in the annexed area.

Other Items to be considered:

What happens if the annexing district does not get sufficient facilities to house the influx of new students?
What would happen to current debt associated with annexed property?
What would happen to the buildings and buses Enhancement funds if they are pledged to debt?
What would happen to existing buses in districts which are losing students?
What would happen with teacher contracts if the change were to occur July 1, 1996?

* Assumes all students in the annexed area would remain in the public schools.

** Buildings & Buses funding may not change if it is committed to debt service. Transportation is not estimated as the density of all districts involved in the annexation will change and cannot be estimated at this time.

No funds are included for Voc. Ed., Federal, and Other Local (Sixteenth Section, TVA, National Forest, Interest, etc.)

Preliminary Study of Annexation Impact on School Districts
Estimated Impact for FY 97
(Based on Information Collected by Telephone from District Superintendents)

Gulfport Annexation
Harrison County

	Current Level	Change	New Level	Change Req. to Maint. $ per Pupil	Estimated Impact beyond FY 97 Current Level	Change	New Level
Students FY 95 ADA (+/-):	10,638.77	(5,000.00)	5,638.77		10,638.77	(5,000.00)	5,638.77
Operational Millage:	35.03	0.00	35.03	37.50	35.03	0.00	35.03
Bond Millage:	6.15	0.00	6.15		6.15	0.00	6.15
Other Millage:	1.47	0.00	1.47		1.47	0.00	1.47
Total Millage:	42.65	0.00	42.65		42.65	0.00	42.65
Tax Base: Gross Assessed Value (+/-)	$268,088,435	($201,066,326)	$67,022,109		$268,088,435	($201,066,326)	$67,022,109
Net Assessed Value (+/-)	$254,961,577	($191,221,182)	$63,740,395		$254,961,577	($191,221,182)	$63,740,395
Net Assessed Value Per Child	$23,965	($12,661)	$11,304		$23,965	($12,661)	$11,304
Based on FY 95 Assessment Information							
Operational Ad Valorem Revenue (+/-):	$8,535,348	($6,401,511)	$2,133,837	$2,390,075	$8,535,348	($6,401,511)	$2,133,837
Operational Ad Valorem Revenue per Child:	$802.29	($423.86)	$378.42	$423.86	$802.29	($423.86)	$378.42
Bond Ad Valorem Revenue (+/-):	$1,568,014	($1,176,011)	$392,003	Change Req. to	$1,568,014	($1,176,011)	$392,003
Bond Ad Valorem Revenue per Child:	$147.39	($77.87)	$69.52	Equalize $ per Pupil	$147.39	($77.87)	$69.52
Other Ad Valorem Revenue (+/-):	$374,793	($281,095)	$93,698	to Wealthier Dist.	$374,793	($281,095)	$93,698
Other Ad Valorem Revenue per Child:	$35.23	($18.61)	$16.62	109.18	$35.23	($18.61)	$16.62
A) Total Ad Valorem Revenue (+/-):	$10,478,155	($7,858,617)	$2,619,538		$10,478,155	($7,858,617)	$2,619,538
Total Ad Valorem Revenue per Child:	$984.90	($520.34)	$464.56		$984.90	($520.34)	$464.56
B) Equity Funding Impact (+/-):	$0	$0	$0		$0	$567,999	$567,999
Equity Funding Impact (+/-) Per Child:	$0.00	$0.00	$0.00		$0.00	$100.73	$100.73
C) Teachers (est. +/- based on 1:25.5, avg. cost of $38,361 FY 97 est. cost)*		$0				($7,518,756)	
Estimated Teacher Unit Change		0				-196	
D) Education Enhancement Funds: (Includes Classroom Supplies, Textbooks, Ad Valorem Tax Reduction, Buildings & Buses FY 97 est.)**	$1,863,593	$0	$1,863,593	$7,057,978	$1,863,593	($875,850)	$987,743
E) General Fund Textbooks (est. at $3.75 per child)	$39,895	$0	$39,895	$1,251.69	$39,895	($18,750)	$21,145
Total Estimated change (A+B+C+D+E)		($7,858,617)				($15,703,974)	

Facilities:

Loss of 1- 9th grade school, 1- 7th & 8th grade school, 5 elementary schools

Currently has an agreement with the City of Gulfport and the Gulfport City Schools for the schools and their operations to remain under the control of the County along with the ability to tax the annexed area for school purposes. Does not feel that there is an immediate problem and may not be affected by this ruling.

Preliminary Study of Annexation Impact on School Districts
Estimated Impact for FY 97
(Based on Information Collected by Telephone from District Superintendents)

Gulfport Separate	Current Level	Change	New Level	Change Req. to Maint. $ per Pupil	Estimated Impact beyond FY 97 Current Level	Change	New Level
Students FY 95 ADA (+/-):	6,021.31	5,000.00	11,021.31		6,021.31	5,000.00	11,021.31
Operational Millage:	46.06	0.00	46.06	(1.67)	46.06	0.00	46.06
Bond Millage:	3.84	0.00	3.84		3.84	0.00	3.84
Other Millage:	1.21	0.00	1.21		1.21	0.00	1.21
Total Millage:	51.11	0.00	51.11		51.11	0.00	51.11
Tax Base: Gross Assessed Value (+/-)	$218,746,474	$201,066,326	$419,812,800		$218,746,474	$201,066,326	$419,812,800
Net Assessed Value (+/-)	$203,259,041	$191,221,182	$394,480,223		$203,259,041	$191,221,182	$394,480,223
Net Assessed Value Per Child	$33,757	$2,035	$35,792		$33,757	$2,035	$35,792
Based on FY 95 Assessment Information							
Operational Ad Valorem Revenue (+/-):	$9,455,278	$8,510,681	$17,965,959	($659,169)	$9,455,278	$8,510,681	$17,965,959
Operational Ad Valorem Revenue per Child:	$1,570.30	$59.81	$1,630.11	($59.81)	$1,570.30	$59.81	$1,630.11
Bond Ad Valorem Revenue (+/-):	$780,515	$734,289	$1,514,804		$780,515	$734,289	$1,514,804
Bond Ad Valorem Revenue per Child:	$129.63	$7.82	$137.44		$129.63	$7.82	$137.44
Other Ad Valorem Revenue (+/-):	$245,943	$231,378	$477,321		$245,943	$231,378	$477,321
Other Ad Valorem Revenue per Child:	$40.85	$2.46	$43.31		$40.85	$2.46	$43.31
A) Total Ad Valorem Revenue (+/-):	$10,481,736	$9,476,348	$19,958,084		$10,481,736	$9,476,348	$19,958,084
Total Ad Valorem Revenue per Child:	$1,740.77	$70.09	$1,810.86		$1,740.77	$70.09	$1,810.86
B) Equity Funding Impact (+/-):	$18,079	$0	$18,079		$18,079	$0	$18,079
Equity Funding Impact (+/-) Per Child:	$3.00	($1.36)	$1.64		$3.00	($1.36)	$1.64
C) Teachers (est. +/- based on 1:25.5, avg. cost of $38,361 FY 97 est. cost)*		$7,518,756				$7,518,756	
Estimated Teacher Unit Change		196				196	
D) Education Enhancement Funds: (Includes Classroom Supplies, Textbooks, Ad Valorem Tax Reduction, Buildings & Buses FY 97 est.)**	$1,054,753	$0	$1,054,753		$1,054,753	$875,850	$1,930,603
E) General Fund Textbooks (est. at $3.75 per child)	$22,580	$0	$22,580		$22,580	$18,750	$41,330
Total Estimated change (A+B+C+D+E)		$16,995,104				$17,889,704	

Facilities:

Gain 1- 9th grade school, 1- 7th & 8th grade school, 5 elementary schools

Other items to be considered:

What happens if the annexing district does not get sufficient facilities to house the influx of new students?
What would happen to current debt associated with annexed property?
What would happen to the buildings and buses Enhancement funds if they are pledged to debt?
What would happen to existing buses in districts which are losing students?
What would happen with teacher contracts if the change were to occur July 1, 1996?

* Assumes all students in the annexed area would remain in the public schools.

** Buildings & Buses funding may not change if it is committed to debt service. Transportation is not estimated as the density of all districts involved in the annexation will change and cannot be estimated at this time.

No funds are included for Voc. Ed., Federal, and Other Local (Sixteenth Section, TVA, National Forest, Interest, etc.)

Preliminary Study of Annexation Impact on School Districts
Estimated Impact for FY 97
(Based on Information Collected by Telephone from District Superintendents)

Clarksdale Annexation
Coahoma County

	Current Level	Change	New Level	Change Req. to Maint. $ per Pupil	Estimated Impact beyond FY 97 Current Level	Change	New Level
Students FY 95 ADA (+/-):	2,169.03	(200.00)	1,969.03		2,169.03	(200.00)	1,969.03
Operational Millage:	29.18	0.00	29.18	3.53	29.18	0.00	29.18
Bond Millage:	0.00	0.00	0.00		0.00	0.00	0.00
Other Millage:	0.00	0.00	0.00		0.00	0.00	0.00
Total Millage:	29.18	0.00	29.18		29.18	0.00	29.18
Tax Base: Gross Assessed Value (+/-)	$52,859,142	($10,000,000)	$42,859,142		$52,859,142	($10,000,000)	$42,859,142
Net Assessed Value (+/-)	$46,332,212	($8,766,410)	$37,565,802		$46,332,212	($8,766,410)	$37,565,802
Net Assessed Value Per Child	$21,361	($2,283)	$19,078		$21,361	($2,283)	$19,078
Based on FY 95 Assessment Information							
Operational Ad Valorem Revenue (+/-):	$1,368,119	($258,855)	$1,109,264	$132,705	$1,368,119	($258,855)	$1,109,264
Operational Ad Valorem Revenue per Child:	$630.75	($67.40)	$563.36	$67.40	$630.75	($67.40)	$563.36
Bond Ad Valorem Revenue (+/-):	$0	$0	$0		$0	$0	$0
Bond Ad Valorem Revenue per Child:	$0.00	$0.00	$0.00		$0.00	$0.00	$0.00
Other Ad Valorem Revenue (+/-):	$0	$0	$0		$0	$0	$0
Other Ad Valorem Revenue per Child:	$0.00	$0.00	$0.00		$0.00	$0.00	$0.00
A) Total Ad Valorem Revenue (+/-):	$1,368,119	($258,855)	$1,109,264		$1,368,119	($258,855)	$1,109,264
Total Ad Valorem Revenue per Child:	$630.75	($67.40)	$563.36		$630.75	($67.40)	$563.36
B) Equity Funding Impact (+/-):	$0	$0	$0		$0	$0	$0
Equity Funding Impact (+/-) Per Child:	$0.00	$0.00	$0.00		$0.00	$0.00	$0.00
C) Teachers (est. +/- based on 1:25.5, avg. cost of $38,361 FY 97 est. cost)*		$0				($306,888)	
Estimated Teacher Unit Change		0				-8	
D) Education Enhancement Funds: (Includes Classroom Supplies, Textbooks, Ad Valorem Tax Reduction, Buildings & Buses FY 97 est.)**	$379,949	$0	$379,949		$379,949	($35,034)	$344,915
E) General Fund Textbooks (est. at $3.75 per child)	$8,134	$0	$8,134		$8,134	($750)	$7,384
Total Estimated change (A+B+C+D+E)		($258,855)				($601,527)	

Facilities:
Loss of the district's only High School and Junior High School

Preliminary Study of Annexation Impact on School Districts
Estimated Impact for FY 97
(Based on Information Collected by Telephone from District Superintendents)

Clarksdale Separate	Current Level	Change	New Level	Change Req. to Maint. $ per Pupil	Estimated Impact beyond FY 97 Current Level	Change	New Level
Students FY 95 ADA (+/-):	4,189.13	200.00	4,389.13		4,189.13	200.00	4,389.13
Operational Millage:	48.00	0.00	48.00	(7.00)	48.00	0.00	48.00
Bond Millage:	0.00	0.00	0.00		0.00	0.00	0.00
Other Millage:	0.00	0.00	0.00		0.00	0.00	0.00
Total Millage:	48.00	0.00	48.00		48.00	0.00	48.00
Tax Base: Gross Assessed Value (+/-)	$50,559,407	$10,000,000	$60,559,407		$50,559,407	$10,000,000	$60,559,407
Net Assessed Value (+/-)	$38,575,262	$8,766,410	$47,341,672		$38,575,262	$8,766,410	$47,341,672
Net Assessed Value Per Child	$9,208	$1,578	$10,786		$9,208	$1,578	$10,786
Based on FY 95 Assessment Information							
Operational Ad Valorem Revenue (+/-):	$1,939,123	$423,839	$2,362,962	($331,260)	$1,939,123	$423,839	$2,362,962
Operational Ad Valorem Revenue per Child:	$462.89	$75.47	$538.37	($75.47)	$462.89	$75.47	$538.37
Bond Ad Valorem Revenue (+/-):	$0	$0	$0		$0	$0	$0
Bond Ad Valorem Revenue per Child:	$0.00	$0.00	$0.00	Change Req. to Equalize $ per Pupil to Wealthier Dist.	$0.00	$0.00	$0.00
Other Ad Valorem Revenue (+/-):	$0	$0	$0		$0	$0	$0
Other Ad Valorem Revenue per Child:	$0.00	$0.00	$0.00	4.23	$0.00	$0.00	$0.00
A) Total Ad Valorem Revenue (+/-):	$1,939,123	$423,839	$2,362,962		$1,939,123	$423,839	$2,362,962
Total Ad Valorem Revenue per Child:	$462.89	$75.47	$538.37		$462.89	$75.47	$538.37
B) Equity Funding Impact (+/-):	$1,633,755	$0	$1,633,755		$1,633,755	($198,786)	$1,434,969
Equity Funding Impact (+/-) Per Child:	$390.00	($17.77)	$372.23		$390.00	($63.06)	$326.94
C) Teachers (est. +/- based on 1:25.5, avg. cost of $38,361 FY 97 est. cost)*		$306,888				$306,888	
Estimated Teacher Unit Change		8				8	
D) Education Enhancement Funds: (Includes Classroom Supplies, Textbooks, Ad Valorem Tax Reduction, Buildings & Buses FY 97 est.)**	$733,810	$0	$733,810	$109,698	$733,810	$35,034	$768,844
E) General Fund Textbooks (est. at $3.75 per child)	$15,709	$0	$15,709	$24.99	$15,709	$750	$16,459
Total Estimated change (A+B+C+D+E)		$730,727				$567,725	

Facilities:

Gain one High School and one Junior High School

Other items to be considered:

What happens if the annexing district does not get sufficient facilities to house the influx of new students?
What would happen to current debt associated with annexed property?
What would happen to the buildings and buses Enhancement funds if they are pledged to debt?
What would happen to existing buses in districts which are losing students?
What would happen with teacher contracts if the change were to occur July 1, 1996?

* Assumes all students in the annexed area would remain in the public schools.
** Buildings & Buses funding may not change if it is committed to debt service. Transportation is not estimated as the density of all districts involved in the annexation will change and cannot be estimated at this time.
No funds are included for Voc. Ed., Federal, and Other Local (Sixteenth Section, TVA, National Forest, Interest, etc.)

Preliminary Study of Annexation Impact on School Districts
Estimated Impact for FY 97
(Based on Information Collected by Telephone from District Superintendents)

Tupelo Annexation
Lee County

	Current Level	Change	New Level	Change Req. to Maint. $ per Pupil	Current Level	Change	New Level
Students FY 95 ADA (+/-):	5,200.92	(340.00)	4,860.92	49.76	5,200.92	(340.00)	4,860.92
Operational Millage:	37.80	0.00	37.80		37.80	0.00	37.80
Bond Millage:	8.87	0.00	8.87		8.87	0.00	8.87
Other Millage:	3.47	0.00	3.47		3.47	0.00	3.47
Total Millage:	50.14	0.00	50.14		50.14	0.00	50.14
Tax Base: Gross Assessed Value (+/-)	$108,817,759	($64,255,146)	$44,562,613		$108,817,759	($64,255,146)	$44,562,613
Net Assessed Value (+/-)	$102,428,971	($61,258,804)	$41,170,167		$102,428,971	($61,258,804)	$41,170,167
Net Assessed Value Per Child	$19,694	($11,224)	$8,470		$19,694	($11,224)	$8,470
Based on FY 95 Assessment Information							
Operational Ad Valorem Revenue (+/-):	$3,837,777	($1,798,574)	$2,039,203	$1,547,687	$3,837,777	($1,798,574)	$2,039,203
Operational Ad Valorem Revenue per Child:	$737.90	($318.39)	$419.51	$318.39	$737.90	($318.39)	$419.51
Bond Ad Valorem Revenue (+/-):	$908,545	($425,792)	$482,753	Change Req. to	$908,545	($425,792)	$482,753
Bond Ad Valorem Revenue per Child:	$174.69	($75.38)	$99.31	Equalize $ per Pupil	$174.69	($75.38)	$99.31
Other Ad Valorem Revenue (+/-):	$355,429	($166,574)	$188,855	to Wealthier Dist.	$355,429	($166,574)	$188,855
Other Ad Valorem Revenue per Child:	$68.34	($29.49)	$38.85	161.40	$68.34	($29.49)	$38.85
A) Total Ad Valorem Revenue (+/-):	$5,101,751	($2,390,940)	$2,710,811		$5,101,751	($2,390,940)	$2,710,811
Total Ad Valorem Revenue per Child:	$980.93	($423.26)	$557.67		$980.93	($423.26)	$557.67
B) Equity Funding Impact (+/-):	$0	$0	$0		$0	$1,366,288	$1,366,288
Equity Funding Impact (+/-) Per Child:	$0.00	$0.00	$0.00		$0.00	$281.08	$281.08
C) Teachers (est. +/- based on 1:25.5, avg. cost of $38,361 FY 97 est. cost)*		$0				($498,693)	
Estimated Teacher Unit Change		0				-13	
D) Education Enhancement Funds: (Includes Classroom Supplies, Textbooks, Ad Valorem Tax Reduction, Buildings & Buses FY 97 est.)**	$911,045	$0	$911,045	$6,161,995	$911,045	($59,558)	$851,487
E) General Fund Textbooks (est. at $3.75 per child)	$19,503	$0	$19,503	$1,267.66	$19,503	($1,275)	$18,228
Total Estimated change (A+B+C+D+E)		($2,390,940)				($1,584,178)	

Estimated Impact beyond FY 97

Facilities:

No facilities are located in the annexed area.

EXHIBIT "B" TO RHODES AFF.

Preliminary Study of Annexation Impact on School Districts
Estimated Impact for FY 97
(Based on Information Collected by Telephone from District Superintendents)

Tupelo Separate	Current Level	Change	New Level	Change Req. to Maint. $ per Pupil	Estimated Impact beyond FY 97 Current Level	Change	New Level
Students FY 95 ADA (+/-):	6,740.70	340.00	7,080.70		6,740.70	340.00	7,080.70
Operational Millage:	41.80	0.00	41.80	(6.72)	41.80	0.00	41.80
Bond Millage:	8.99		8.99		8.99		8.99
Other Millage:	2.56	0.00	2.56		2.56	0.00	2.56
Total Millage:	53.35	0.00	53.35		53.35	0.00	53.35
Tax Base: Gross Assessed Value (+/-)	$252,526,400	$64,255,146	$316,781,546		$252,526,400	$64,255,146	$316,781,546
Net Assessed Value (+/-)	$242,614,445	$61,258,804	$303,873,249		$242,614,445	$61,258,804	$303,873,249
Net Assessed Value Per Child	$35,992	$6,924	$42,916		$35,992	$6,924	$42,916
Based on FY 95 Assessment Information							
Operational Ad Valorem Revenue (+/-):	$9,955,760	$1,990,589	$11,946,349	($1,488,422)	$9,955,760	$1,990,589	$11,946,349
Operational Ad Valorem Revenue per Child:	$1,476.96	$210.21	$1,687.17	($210.21)	$1,476.96	$210.21	$1,687.17
Bond Ad Valorem Revenue (+/-):	$2,181,104	$431,553	$2,612,657		$2,181,104	$431,553	$2,612,657
Bond Ad Valorem Revenue per Child:	$323.57	$45.41	$368.98		$323.57	$45.41	$368.98
Other Ad Valorem Revenue (+/-):	$621,093	$122,889	$743,982		$621,093	$122,889	$743,982
Other Ad Valorem Revenue per Child:	$92.14	$12.93	$105.07		$92.14	$12.93	$105.07
A) Total Ad Valorem Revenue (+/-):	$12,757,957	$2,545,031	$15,302,988		$12,757,957	$2,545,031	$15,302,988
Total Ad Valorem Revenue per Child:	$1,892.68	$268.55	$2,161.23		$1,892.68	$268.55	$2,161.23
B) Equity Funding Impact (+/-):	$0	$0	$0		$0	$0	$0
Equity Funding Impact (+/-) Per Child:	$0.00	$0.00	$0.00		$0.00	$0.00	$0.00
C) Teachers (est. +/- based on 1:25.5, avg. cost of $38,361 FY 97 est. cost)*		$498,693				$498,693	
Estimated Teacher Unit Change		13				13	
D) Education Enhancement Funds: (Includes Classroom Supplies, Textbooks, Ad Valorem Tax Reduction, Buildings & Buses FY 97 est.)**	$1,180,768	. $0	$1,180,768		$1,180,768	$59,558	$1,240,326
E) General Fund Textbooks (est. at $3.75 per child)	$25,278	$0	$25,278		$25,278	$1,275	$26,553
Total Estimated change (A+B+C+D+E)		$3,043,724				$3,104,557	

Facilities:

No facilities are located in the annexed area.

Other items to be considered:

What happens if the annexing district does not get sufficient facilities to house the influx of new students?
What would happen to current debt associated with annexed property?
What would happen to the buildings and buses Enhancement funds if they are pledged to debt?
What would happen to existing buses in districts which are losing students?
What would happen with teacher contracts if the change were to occur July 1, 1996?

* Assumes all students in the annexed area would remain in the public schools.
** Buildings & Buses funding may not change if it is committed to debt service. Transportation is not estimated as the density of all districts involved in the annexation will change and cannot be estimated at this time.
No funds are included for Voc. Ed., Federal, and Other Local (Sixteenth Section, TVA, National Forest, Interest, etc.)

Preliminary Study of Annexation Impact on School Districts
Estimated Impact for FY 97
(Based on Information Collected by Telephone from District Superintendents)

Jackson Annexation Hinds County	Current Level	Change	New Level	Change Req. to Maint. $ per Pupil	Estimated Impact beyond FY 97 Current Level	Change	New Level
Students FY 95 ADA (+/-):	5,166.05	(1,200.00)	3,966.05		5,166.05	(1,200.00)	3,966.05
Operational Millage:	35.29	0.00	35.29	5.14	35.29	0.00	35.29
Bond Millage:	11.00	0.00	11.00		11.00	0.00	11.00
Other Millage:	2.60	0.00	2.60		2.60	0.00	2.60
Total Millage:	48.89	0.00	48.89		48.89	0.00	48.89
Tax Base: Gross Assessed Value (+/-)	$132,365,276	($44,743,637)	$87,621,639		$132,365,276	($44,743,637)	$87,621,639
Net Assessed Value (+/-)	$123,920,536	($41,265,539)	$82,654,997		$123,920,536	($41,265,539)	$82,654,997
Net Assessed Value Per Child	$23,987	($3,146)	$20,841		$23,987	($3,146)	$20,841
Based on FY 95 Assessment Information							
Operational Ad Valorem Revenue (+/-):	$4,216,104	($1,403,963)	$2,812,141	$424,622	$4,216,104	($1,403,963)	$2,812,141
Operational Ad Valorem Revenue per Child:	$816.12	($107.06)	$709.05	$107.06	$816.12	($107.06)	$709.05
Bond Ad Valorem Revenue (+/-):	$1,363,126	($453,921)	$909,205	Change Req. to	$1,363,126	($453,921)	$909,205
Bond Ad Valorem Revenue per Child:	$263.86	($34.62)	$229.25	Equalize $ per Pupil	$263.86	($34.62)	$229.25
Other Ad Valorem Revenue (+/-):	$322,193	($107,290)	$214,903	to Wealthier Dist.	$322,193	($107,290)	$214,903
Other Ad Valorem Revenue per Child:	$62.37	($8.18)	$54.19	59.54	$62.37	($8.18)	$54.19
A) Total Ad Valorem Revenue (+/-):	$5,901,423	($1,965,174)	$3,936,249		$5,901,423	($1,965,174)	$3,936,249
Total Ad Valorem Revenue per Child:	$1,142.35	($149.86)	$992.49		$1,142.35	($149.86)	$992.49
B) Equity Funding Impact (+/-):	$0	$0	$0		$0	$0	$0
Equity Funding Impact (+/-) Per Child:	$0.00	$0.00	$0.00		$0.00	$0.00	$0.00
C) Teachers (est. +/- based on 1:25.5, avg. cost of $38,361 FY 97 est. cost)*		$0				($1,802,967)	
Estimated Teacher Unit Change		0				-47	
D) Education Enhancement Funds: (Includes Classroom Supplies, Textbooks, Ad Valorem Tax Reduction, Buildings & Buses FY 97 est.)**	$904,937	$0	$904,937	$5,026,083	$904,937	($210,204)	$694,733
E) General Fund Textbooks (est. at $3.75 per child)	$19,373	$0	$19,373	$1,267.28	$19,373	($4,500)	$14,873
Total Estimated change (A+B+C+D+E)		($1,965,174)				($3,982,845)	

Facilities:

Loss of Byram Attendance Center (960 ADA) newly renovated at a cost of $3M

Preliminary Study of Annexation Impact on School Districts
Estimated Impact for FY 97
(Based on Information Collected by Telephone from District Superintendents)

Jackson Separate	Current Level	Change	New Level	Change Req. to Maint. $ per Pupil	Estimated Impact beyond FY 97 Current Level	Change	New Level
Students FY 95 ADA (+/-):	29,596.52	1,200.00	30,796.52		29,596.52	1,200.00	30,796.52
Operational Millage:	65.73	0.00	65.73	(0.33)	65.73	0.00	65.73
Bond Millage:	7.85		7.85		7.85		7.85
Other Millage:	2.74	0.00	2.74		2.74	0.00	2.74
Total Millage:	76.32	0.00	76.32		76.32	0.00	76.32
Tax Base: Gross Assessed Value (+/-)	$921,177,086	$44,743,637	$965,920,723		$921,177,086	$44,743,637	$965,920,723
Net Assessed Value (+/-)	$871,726,167	$41,265,539	$912,991,706		$871,726,167	$41,265,539	$912,991,706
Net Assessed Value Per Child	$29,454	$192	$29,646		$29,454	$192	$29,646
Based on FY 95 Assessment Information							
Operational Ad Valorem Revenue (+/-):	$58,203,970	$2,660,086	$60,864,056	($300,188)	$58,203,970	$2,660,086	$60,864,056
Operational Ad Valorem Revenue per Child:	$1,966.58	$9.75	$1,976.33	($9.75)	$1,966.58	$9.75	$1,976.33
Bond Ad Valorem Revenue (+/-):	$6,843,050	$323,935	$7,166,985		$6,843,050	$323,935	$7,166,985
Bond Ad Valorem Revenue per Child:	$231.21	$1.51	$232.72		$231.21	$1.51	$232.72
Other Ad Valorem Revenue (+/-):	$2,388,531	$113,067	$2,501,598		$2,388,531	$113,067	$2,501,598
Other Ad Valorem Revenue per Child:	$80.70	$0.53	$81.23		$80.70	$0.53	$81.23
A) Total Ad Valorem Revenue (+/-):	$67,435,551	$3,097,088	$70,532,639		$67,435,551	$3,097,088	$70,532,639
Total Ad Valorem Revenue per Child:	$2,278.50	$11.78	$2,290.28		$2,278.50	$11.78	$2,290.28
B) Equity Funding Impact (+/-):	$0	$0	$0		$0	$0	$0
Equity Funding Impact (+/-) Per Child:	$0.00	$0.00	$0.00		$0.00	$0.00	$0.00
C) Teachers (est. +/- based on 1:25.5, avg. cost of $38,361 FY 97 est. cost)*		$1,802,967				$1,802,967	
Estimated Teacher Unit Change		47				47	
D) Education Enhancement Funds: (Includes Classroom Supplies, Textbooks, Ad Valorem Tax Reduction, Buildings & Buses FY 97 est.)**	$5,184,422	$0	$5,184,422		$5,184,422	$210,204	$5,394,626
E) General Fund Textbooks (est. at $3.75 per child)	$110,987	$0	$110,987		$110,987	$4,500	$115,487
Total Estimated change (A+B+C+D+E)		$4,900,055				$5,114,759	

Facilities:

Gain Byram Attendance Center (960 ADA) newly renovated by the County at a cost of $3M

Other items to be considered:

What happens if the annexing district does not get sufficient facilities to house the influx of new students?
What would happen to current debt associated with annexed property?
What would happen to the buildings and buses Enhancement funds if they are pledged to debt?
What would happen to existing buses in districts which are losing students?
What would happen with teacher contracts if the change were to occur July 1, 1996?

* Assumes all students in the annexed area would remain in the public schools.
** Buildings & Buses funding may not change if it is committed to debt service. Transportation is not estimated as the density of all districts involved in the annexation will change and cannot be estimated at this time.
No funds are included for Voc. Ed., Federal, and Other Local (Sixteenth Section, TVA, National Forest, Interest, etc.)

EXHIBIT "B"

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STATE OF MISSISSIPPI, Plaintiff vs. JANET RENO, In Her Official Capacity As United States Attorney General, Defendant	Civil Action No. ___

COMPLAINT

The State of Mississippi, through counsel, files this Complaint for declaratory judgment pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. §1973c, and shows as follows:

1. This action is brought by the State of Mississippi pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. §1973c, seeking a declaratory judgment from this Court that §47 and §52 of the Mississippi Uniform School Law of 1986 do not have the purpose or effect of denying or abridging the right to vote on account or race or color.

2. This Court has exclusive jurisdiction over this action by virtue of Section 5 of the Voting Rights Act, 42 U.S.C. §1973c. Jurisdiction is also proper under 28 U.S.C. §2201 and §2284. Venue is established in this district by 42 U.S.C. §1973c.

3. The plaintiff is the State of Mississippi represented by its Attorney General.

4. The defendant is the Attorney General for the United States who is sued in her official capacity only.

5. In it [sic] 1986 session, the Mississippi Legislature enacted the Mississippi Uniform School Law of 1986 (the Act). The legislative package included a number of new substantive provisions regarding the administration of public school districts, and it provided for the repeal of a number of statutes which were to be superseded by provisions of the new legislation.

6. Section 47 of the Act provided for the repeal of 23 statutes that had previously applied to the administration of city school districts. The purpose of these repealers was to drop the designation of "city" school district and to provide that henceforth all districts were simply designated as "districts" with all districts having equal powers and with all districts being treated equally.

7. One of the statutes repealed by §47 was Miss. Code Ann. §37-7-611. This statute had provided that city school district lines automatically expanded to match municipal boundary lines when a municipality annexed additional territory into the city.

8. Section 37-7-611 was replaced by §52 of the Act, Miss. Code Ann §37-7-103, which provided that in the event of a municipal annexation, city school district lines would remain where they had been prior to the annexation unless the city, county, or line school districts affected agreed upon the placement of a new and different boundary line separating them. The purpose of the

repealer and the replacement statute was simply to put former county and city districts on an equal footing and to allow the districts to negotiate among themselves in the event of a municipal annexation.

9. The Act, in its entirety, was submitted to the Attorney General for preclearance pursuant to Section 5 of the Voting Rights Act. The Attorney General interposed no objection to the Act.

10. Subsequently, the Attorney General notified the Mississippi Attorney General that doubts had arisen concerning whether changes intended by the repeal of §37-7-611 had been identified in the original submission. The Attorney General requested that §47 be resubmitted for preclearance. This section was resubmitted and an objection was interposed by the Attorney General on March 31, 1989. The objection was based on the Attorney General's impermissible, and incorrect, consideration of educational issues, and on the Attorney General's assertion that adding presumably white voters from newly annexed territory could have a dilutive effect notwithstanding the Attorney General's power, *ab initio*, to prevent dilutive annexations through Section 5 review of those proposed annexations themselves.

11. Litigation prosecuted by a municipal school district ensued wherein the question of whether the provision had received preclearance was litigated. It was ultimately decided by the United States District Court for the Southern District of Mississippi that §47 had no [sic] been properly precleared and could not be further implemented. The Court also ruled that §52 could not be further implemented notwithstanding the fact that §52 had

been properly identified to the Attorney General in the original submission and no objection had been interposed.

12. The provisions of §47 are race neutral in purpose and effect. The section does not have the purpose, and will not have the effect, of abridging anyone's right to vote on account of race or color.

13. The defendant's objection to §47 of the Act is wrongful, and, pursuant to 42 U.S.C. §1973c, the plaintiff is entitled to a declaratory judgment herein adjudicating that §47 does not have the purpose or effect of abridging anyone's right to vote on account of race or color, and adjudicating that §47 may be implemented without delay.

WHEREFORE, the plaintiff prays for the following relief:

14. That a three-judge District Court be convened to hear and determine this action pursuant to 28 U.S.C. §2284 and 42 U.S.C. §1973c; and

15. The Court proceed to hear this matter on an expedited basis; and

16. That the Court determine and enter a declaratory judgment adjudicating that §47 of the Mississippi Uniform School Law of 1986 does not have the purpose or effect of abridging the right to vote on account of race or color, and further adjudicating that §47 may be implemented without delay; and

17. That the Court enter such other general relief to which the Plaintiff may be entitled herein.

Respectfully submitted,

STATE OF MISSISSIPPI

by: **MIKE MOORE**
ATTORNEY GENERAL

by: /s/ Robert E. Sanders
*ROBERT E. SANDERS
ASSISTANT ATTORNEY GENERAL
BAR NO. 6446

*Counsel of Record

Office of the Attorney General
P.O. Box 220
Jackson, Mississippi 39205
(601) 359-3815

CERTIFICATE OF SERVICE

This is to certify that I, Robert E. Sanders, an Assistant Attorney for the State of Mississippi, have caused to be mailed this date, via United States Postal Service, first-class postage prepaid, a true and correct copy of the foregoing to:

W. David Watkins
Holmes S. Adams
Perry Sansing
Brunini, Grantham, Grower & Hewes
P.O. Drawer 119
Jackson, Mississippi 39205

Mark S. Wann
P.O. Box 3977
Jackson, Mississippi 39207-3977

Dennis L. Horn
Horn & Payne
P.O. Box 1725
Jackson, Mississippi 39215

William E. Andrews, III
P.O. Box 130
Purvis, Mississippi 39475

Patrick Zachary
Aultman, Tyner, McNeese & Ruffin
315 Hemphill Street
Hattiesbury [sic], Mississippi 39401-3808

Donna Murphy
U.S. Dept. of Justice
Room 716, HOLC Building
320 First Street, N.W.
Washington, D.C. 20001

This the ___ day of July, 1996.

ROBERT E. SANDERS
ASSISTANT ATTORNEY GENERAL
Bar No. 6446

Office of the Attorney General
Post Office Box 220
Jackson, Mississippi 39205
Telephone: (601) 359-3815

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION

JOHNNY DUPREE, *et al.* — PLAINTIFFS

v. — CIVIL ACTION NO. H90-0043(W)

MIKE MOORE, Attorney General of Mississippi, in His Official Capacity, and THE STATE OF MISSISSIPPI — DEFENDANTS

and

THE LAMAR COUNTY BOARD OF EDUCATION and TRUSTEES, *et al.* — DEFENDANTS/INTERVENORS

and

FORREST COUNTY SCHOOL DISTRICT, *et al.* — DEFENDANTS/INTERVENORS

JOINDER

COME NOW, the Forrest County School District and Members of Its Board of Trustees, in Their Official Capacities, by and through their attorneys of record, and join in the State Defendants' Emergency Motion for Stay, which was filed with this Court on July 17, 1996.

Respectfully submitted,

FORREST COUNTY SCHOOL DISTRICT and the Members of the BOARD OF TRUSTEES Thereof in Their Official Capacities, DEFENDANTS/INTERVENORS

Patrick H. Zachary, Esquire
Zachary & Leggett
315 Hemphill Street
Post Office Box 15848
Hattiesburg, Mississippi 39404-5848
(601) 264-0300

John L. Maxey, II, MSB #1946
S. Mark Wann, MSB #6936
Maxey, Wann & Begley PLLC
1900 Deposit Guaranty Plaza
210 East Capitol Street
Post Office Box 3977
Jackson, Mississippi 39207-3977
(601) 355-8855

THEIR ATTORNEYS

By: /s/ S. Mark Wann
S. MARK WANN

CERTIFICATE OF SERVICE

I, S. Mark Wann, do hereby certify that I have this day forwarded a true and correct copy of the above and foregoing Joinder to the following counsel of record:

W. David Watkins, Esquire **(via hand delivery)**
Holmes S. Adams, Esquire
Perry Sansing, Esquire
Brunini, Grantham, Grower & Hewes, PLLC
1400 Trustmark Building
Post Office Drawer 119
Jackson, Mississippi 39205
COUNSEL FOR PLAINTIFFS

Robert E. Sanders (**via U.S. mail**)
Assistant Attorney General
Office of the Attorney General
Carroll Gartin Justice Building
Post Office Box 220
Jackson, Mississippi 39205-0220
COUNSEL FOR DEFENDANTS

Dennis L. Horn, Esquire (**via U.S. mail**)
Horn & Payne
2603 Brookwood Drive
Post Office Box 1725
Jackson, Mississippi 39215-1725

William E. Andrews, III, Esquire (**via U.S. mail**)
103 Shanks Street
Post Office Box 130
Purvis, Mississippi 39475

COUNSEL FOR DEFENDANTS/INTERVENORS

Elizabeth Johnson (**via U.S. mail**)
Mark A. Posner
Attorneys, Voting Section
Civil Rights Division
United States Department of Justice
Post Office Box 66128
Washington, D.C. 20035-6128
COUNSEL FOR THE UNITED STATES
AS AMICUS CURIAE

THIS the 18th day of July, 1996.

/s/ S. Mark Wann
S. MARK WANN

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION

JOHNNY DUPREE, JEFF R. BOWMAN, KATHRYN JONES AND CHARLOTTE TULLOS, Individually and in Their Official Capacities as Members of the Board of Trustees of the Hattiesburg Public School District — PLAINTIFFS

VS. — CIVIL ACTION, NO. H90-0043(W)

MIKE MOORE, Attorney General of Mississippi, in His Official Capacity, and the STATE OF MISSISSIPPI — DEFENDANTS

and

THE LAMAR COUNTY BOARD OF EDUCATION and TRUSTEES, in Their Official Capacities, Charles L. Cameron, Rita Downs, Tommy Graham, Freddie G. Howell and Dr. Johnny R. Purvis — DEFENDANTS/INTERVENORS

and

FORREST COUNTY SCHOOL DISTRICT and the Members of the BOARD OF TRUSTEES Thereof in Their Official Capacities — DEFENDANTS/INTERVENORS

LAMAR COUNTY'S JOINDER IN STATE DEFENDANT'S MOTION FOR STAY AND REPLY IN OPPOSITION TO PLAINTIFFS' MEMORANDUM IN OPPOSITION TO STATE DEFENDANT'S EMERGENCY MOTION FOR STAY

COME NOW Defendants/Intervenors The Lamar County Board of Education and Trustees, in Their Official Capacities, and file this their Joinder in State Defendant's Motion for Stay and Reply in Opposition to Plaintiffs' Memorandum in Opposition to State Defendant's Emergency Motion for Stay and would show unto the Court the following:

1. Defendants/Intervenors The Lamar County School District and its Trustees join, in all respects, in the Motion for Stay filed by the State Defendants.

2. The remedy applicable under United States Supreme Court precedent, is for the State and is subdivisions to be ordered to submit the voting law changes to a forum designated by Congress. The State has accomplished that act by filing in the District of Columbia District Court.

3. No other changes should go into effect until separately precleared. 28 U.S.C. 51.18.

4. "Any change affecting voting, even though it . . . is designed to remove the elements that caused objection by the Attorney General to a prior submitted change, must meet the § 5 preclearance requirement." 28 C.F.R. § 51.12.

5. The factors to be weighed include "the nature of the changes complained of, and whether it was reasonably clear at the time of the [implemented change] that

the changes were covered by § 5." *Perkins v. Matthews*, 400 U.S. 379 at 396 (1971). It was not reasonably clear, at any point prior to the Supreme Court's decision herein, that *Morris v. Gressette*, 432 U.S. 491 (1977), could be overridden by the All Writs Act so that § 5 coverage did obtain. No prior case has so held. Therefore such an affirmance was not predictable.

6. Redrawing of school district lines is primarily a legislative function.

7. No evidentiary hearing, or findings, have considered whether or to what extent each school district boundary or voting change since 1986 has been precleared.

8. Since *Miller v. Johnson*, ___ U.S. ___, 115 S.Ct. at 2475 (1995) now requires strict scrutiny of changes to districts made to obtain maximization of minority populations, the United States Justice Department's stated reason for denial of preclearance is now invalid.

9. A stay would not harm the Hattiesburg School District because the relief Hattiesburg seeks re: modifying school boundaries (a copy of Hattiesburg's Amended Desegregation Plan, the Order of July 5, 1996 and the Final Judgment of July 9, 1996 are annexed hereto as Exhibits) cannot be granted without preclearance by the United States Justice Department.

Respectfully submitted,

/s/ Dennis L. Horn
DENNIS L. HORN

DENNIS L. HORN
HORN & PAYNE
P. O. Box 1725
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(601) 373-0170
MSB #2645

WILLIAM E. ANDREWS, III
P. O. Box 130
Purvis, MS 39475
(601) 794-8053
MSB #1605

CERTIFICATE OF SERVICE

I, Dennis L. Horn, hereby certify that I have this date mailed, postage prepaid, a true and correct copy of the above and foregoing Lamar County's Joinder in State Defendant's Motion for Stay and Reply in Opposition to Plaintiffs' Memorandum in Opposition to State Defendant's Emergency Motion for Stay to Hon. Perry Sansing, P. O. Drawer 119, Jackson, MS 39205; Hon. Robert E. Sanders, Special Assistant Attorney General, P. O. Box 220, Jackson, MS 39205; Hon. John L. Maxey, II and Hon. S. Mark Wann, Maxey, Pigott, Wann & Begley, P. O. Box 3977, Jackson, MS 39207-3977; Hon. Patrick H. Zachary, P. O. Drawer 750, Hattiesburg, MS 39403-0750; and Hon. Donna Murphy, United States Department of Justice, Room #716, HOLC Building, 320 First Street, N.W., Washington, D.C. 20001.

This the 26th day of July, 1996.

/s/ Dennis L. Horn
DENNIS L. HORN

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
- HATTIESBURG DIVISION

JOHNNY DUPREE, *et al.* PLAINTIFFS

v. CIVIL ACTION NO. H90-0043(W)

MIKE MORE, attorney general of Mississippi, in His Official Capacity, and
THE STATE OF MISSISSIPPI DEFENDANTS

and

THE LAMAR COUNTY BOARD OF EDUCATION and TRUSTEES, *et al.* DEFENDANTS/INTERVENORS

and

FORREST COUNTY SCHOOL DISTRICT *et al.* DEFENDANTS/INTERVENORS

REPLY OF FORREST COUNTY SCHOOL DISTRICT IN SUPPORT OF MOTION FOR STAY

COME NOW the Forrest County School District and Members of Its Board of Trustees, in Their Official Capacities, by and through their attorneys of record, and file this reply in support of their motion for stay, showing unto the Court as follows:

I. THIS COURT HAS JURISDICTION TO ISSUE A STAY.

In their response to the State's motion for an emergency stay (a motion in which the Forrest County School District has joined), the Plaintiffs go to great lengths to

suggest that the State elected not to rely on FED. R. CIV. P. 60(b) in requesting a stay of this Court's earlier injunction enjoining the effectiveness of §§ 47 and 52 of the Uniform School Law of 1986. The Plaintiffs go to such great pains, perhaps, because it is clear that this Court has jurisdiction under said rule to modify its earlier injunction in any way which it finds equitable. In its emergency motion, the State did not specifically cite the rule upon which it believes this Court has authority to issue the requested stay, but it is clear that the Court does have such authority under Rule 60(b). The fact that the State did not cite that specific rule is of no import. If Rule 60(b) is the source of this Court's equity power to maintain jurisdiction over the injunction which it previously issued, then the State's motion may and should be treated as a motion brought under Rule 60(b). As will be discussed below, that rule grants the court broad discretion to maintain jurisdiction over its injunction and to modify it as it sees fit. As Plaintiffs note, Rule 60(b)(5) "refers to some change in conditions that makes continued enforcement inequitable." C. WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 2863 (1995). Rule 60(b)(6) states that a party may be relieved from certain effects of a final judgment, order or proceeding for "any other reason justifying relief from the operation of the judgment." A broader grant of discretion cannot be imagined.

In the case of *Ingraham v. United States*, 808 F.2d 1075, 1080-81 (5th Cir. 1987), the Fifth Circuit stated the following:

> We are mindful that Rule 60(b) is **" 'a grand reservoir of equitable power to do justice in a particular case.' "** *Seven Elves, Inc. v. Eskenazi,*

> 635 F.2d. 396, 402 (5th Cir. 1981) (quoting, *Menier v. United States*, 405 F.2d 245, 248 (5th Cir. 1968). As such, a Rule 60(b) motion may be entertained in the district court at any time within a year of judgment, regardless of the pendency, **or even the *completion of an appeal.*** *Standard Oil Co. v. United States*, 429 U.S. 17 (1976).

(Emphasis added.)

In the *Standard Oil* case, the United States Supreme Court recognized that "***in the past*** both this court and many courts of appeals have required appellate leave before the district court could reopen a case which had been reviewed on appeal." *Id.*, at 17 (emphasis added). The court went on to hold that (1) since the appellate mandate related to the record and issues then before the court and (2) because district courts can recognize frivolous motions to reopen a case, and further, (3) since the requirement of obtaining appellant [sic] leave for reopening a case adds to the expense of litigation, parties are not required to obtain leave from the appellate court, prior to seeking the district court to set aside the issuance of the injunction. The court further noted that "[i]indeed [sic], the trial court 'is in a much better position to pass upon the issues presented in a motion pursuant to Rule 60(b). . . . ' " *Id.*, at 19 (*quoting Wilkins v. Sunbeam Corp.*, 405 F.2d 165, 166 (10th Cir. 1968); accord, *Wilson Research Corp. v. Piolite Plastics Corp.*, 336 F.2d. 303, 305 (1st Cir. 1964).

The Supreme Court in *Standard Oil* further illuminated this point as follows:

> The appellate-leave requirement adds to the delay and expense of litigation and also burdens

> the increasingly scarce time of the federal appellate courts. We see no reason to continue the existence of this "unnecessary and undesirable clog on the proceedings." *S.C. Johnson and Son, Inc. v. Johnson*, 175 F.2d. 176, 184 (2nd. Cir. 1949) (Clark, J., descending [sic]).

In *Dow Chemical, USA v. Consumer Product Safety Comm.*, 464 F.Supp. 904, 907 (D.La. 1979), that court also recognized the impracticability of requiring appellate leave prior to a district court entertaining a Rule 60(b) motion in a post mandate case, stating, *inter alia*, "[i]sn't the trial court in a better position to pass upon the issues presented in a . . . motion considering its familiarity with the case and its reasons for granting the injunction?"

The broad range of equitable powers granted to district courts is particularly applicable in injunction cases. This principle is evidenced by the following language from the Court of Appeals for the Fifth Circuit:

> An injunction is by nature an equitable decree. The power of a federal court that enters an equitable injunction is not spent simply because it has once spoken. The federal courts have always affirmed their equitable power to modify any final decree that has prospective application. As Justice Cardozo stated over half a century ago in *United States v. Swift & Co.*, 'A continuing decree of injunction directed to events to come is subject always to adaptation as events may shape the need.' [Footnote omitted.] The 'continuing responsibility of the issuing court over its decrees is a necessary concomitant of the prospective operation of equitable relief,' Wright and Miller state. [Footnote omitted.] And they add, 'Inasmuch as an

> injunctive decreed is drafted in light of what the court believes will be the future course of events, a court must continually be willing to redraft the order at the request of the party who obtained equitable relief in order to insure that the decree accomplishes its intended result.' [Footnote omitted.]

United States v. Lawrence County School Dist., 799 F.2d 1031 (5th Cir. 1986).

Moreover, in considering whether a district court has jurisdiction to consider a party's motion for restitution, the Court of Appeals for the Ninth Circuit stated that "[t]he subject of the controversy was properly before the district court, because the mandate of the Court of Appeals, once issued, returns to the district court. *Caldwell v. Puget Sound Electrical Apprenticeship & Training Trust*, 824 F.2d 765, 766 (9th Cir. 1987). Distinguishing cases in which a district court abuses its discretion by granting relief beyond the scope of the mandate issue by a higher court, the *Caldwell* court found no error in the district court's equitable ruling which was consistent with the higher court's mandate. *Citing Quern v. Jordan*, 440 U.S. 332 (1979); *Anderson v. Knox*, 300 F.2d 296, 298 (9th Cir. 1962). *See also Panama Processes SA v. City's Service Co.*, 789 F.2d 991 (2nd Cir. 1986) (as long as appellate court has not expressly or implicitly ruled on an issue, the district court has not transgressed any jurisdictional boundaries by amending judgment after appeal has been taken and disposed of). In the instant case, the United States Supreme Court never considered any request for a stay. In fact, a stay was in effect at the time the Supreme Court considered the appeal.

The cases on which Plaintiffs rely for the proposition that this Court lacks jurisdiction to grant the relief sought in the motion for stay are inapposite to the situation presently before the Court. The cases relied on by the Plaintiffs primarily deal with the issue of whether a district court retains authority to issue a stay ***after the appellate court has issued its mandate pending an application for certiorari*** *to the United States Supreme Court. See, e.g., Brinkman v. Dept. of Corrections State of Kansas,* 857 F.Supp. 775 (D. Kan. 199); *In re Stumes,* 681 F.2d 524, 525 (8th Cir. 1982); *Gander v. FMC Corp.,* 733 F.Supp. at 1347; *Mister v. Illinois Cent. Gulf R. Co.,* 680 F.Supp. 297, 298-99 (S.D.Ill.), *cert. denied,* 485 U.S. 1035 (1988); *Hovater v. Equifax Services, Inc.,* 669 F.Supp. 392, 393 (N.D.Ala.), *cert. denied,* 484 U.S. 977, 108 U.S. 490, 98 L.Ed.2d 488 (1987); *Studiengesellschaft Kohle, mbH v. Novamont Corp.,* 578 F.Supp. 78, 80 (S.D.N.Y.), *cert. denied,* 464 U.S. 939 (1983). While these cases stand for the proposition that, pursuant to the terms of 28 U.S.C. § 2101(F), pending an application for certiorari to the Supreme Court, only the Court of Appeals or a justice of the United States Supreme Court can stay the execution or enforcement of the ***Court of Appeals judgment,*** said statute has not been invoked and the state Defendants and Defendants/Intervenors do not ask this court to stay the mandate of a court of appeals, or for that matter, the United States Supreme Court. This is not a matter brought under the terms of 28 U.S.C. § 2101(f).

Moreover, even the cases cited by Plaintiffs stand for the proposition that, after the issuance of a mandate, the District Court regains jurisdiction of the case for the purpose of enforcing the judgment. *Brinkman,* at 776-77.

Nor is the situation presently before the Court controlled by cases such as *Belyeu v. Johnston*, 82 F.3d 613 (5th Cir. 1996), a habeas case, which essentially stands for the proposition that a federal district court's stay of execution is dissolved once the appellate court mandate is issued. It is also noteworthy that the Plaintiffs cite *Meredith v. Fair*, 306 F.2nd 374 (5th Cir. 1962), in which the Court recognized that, once it had reversed and remanded the decision of the district court, it no longer had residual control over the judgment below. *Id.*, at 376. Indeed, as shown above, once the Supreme Court enters its mandate, this Court regains jurisdiction to entertain equitable considerations not inconsistent with the Supreme Court's Judgment.

The Defendants and Defendants/Intervenors are clearly not asking this Court to do anything inconsistent with the Supreme Court's mandate. This Court found that §§ 47 and 52 of the Uniform School Law of 1986 had not been precleared and issued an injunction. The United States Supreme Court affirmed this Court's finding. This Court now has equitable jurisdiction over the injunction which it earlier issued and may modify that injunction as it sees fit, given the circumstances that currently exist. The Defendants and Defendants/Intervenors are not asking this Court to reconsider its finding that §§ 47 and 52 were not precleared, they simply ask this Court to consider the current circumstances and to issue a temporary stay of its injunction based on those circumstances.

At the time this Court initially issued its injunction, the State had not filed an action in the district court for the District of Columbia seeking preclearance of the statutes in question through the judicial method. Likewise,

the timing of the United States Supreme Court's decision has caused additional problems of which this Court could not have been aware at the time the injunction was originally issued. No one could have predicted that the timing of the United States Supreme Court's decision would push implementation of boundary changes so close to the beginning of an impending school year. Nor could it have been taken for granted at any time that the State would file a lawsuit in the district court for the District of Columbia, seeking judicial preclearance. That is a decision that was only made by the Attorney General within the past few weeks.[1] The State has submitted affidavit testimony to this Court which demonstrates the irreparable harm which will be suffered if a stay is not granted. Based on those facts, the affidavits submitted by the Forrest County School District, the fact that the State has filed an action seeking judicial preclearance in the District of Columbia and the time constraints caused by the unfortunate timing of the Supreme Court's ruling given the impending beginning of a new school year, this Court has adequate reasons to exercise its equitable jurisdiction

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[1] The Plaintiffs have maintained that the State's failure to file such an action in the past should now be held against the State and Defendants/Intervenors. During the *Dupree* litigation, it was always the State's position that the statutes in question had been precleared. This Court initially agreed with the State's position, and the Supreme Court remanded this matter twice for further consideration. It would not have been judicially economical to simultaneously file suit in the District of Columbia. Likewise, had such an action been filed earlier, the Plaintiffs would have no doubt argued that the filing of such an action served as an admission that the statutes in question had not been precleared.

granting a stay. Granting such a stay would in no way be inconsistent with the Supreme Court's ruling.

II. PRECLEARANCE BY THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA WOULD BE RETROACTIVE.

In their brief, the Plaintiffs take issue with the reliance of the State and Defendants/Intervenors on *Berry v. Doles*, 438 U.S. 190 (1978) and *NAACP v. Hampton County Election Commission*, 470 U.S. 166 (1985), for the proposition that preclearance of a voting change which has already taken place can retroactively satisfy § 5. As a result, Plaintiffs erroneously contend that success in the District of Columbia action would have no effect on the *Dupree* injunction. District courts construing those two U.S. Supreme Court decisions agree that those cases suggest retroactive preclearance is proper. Once of those district courts so construing is the district court for the Northern District of Mississippi. In *Moore v. Caledonia Natural Gas District*, 890 F. Supp. 547 (N.D. Miss. 1995), the district court for the Northern District of Mississippi considered the validity of an election which was held on December 21, 1993, but which was not precleared by the United States Attorney General until February 15, 1994. In finding that the preclearance had retroactive effect, the district court stated:

> The crux of the matter is whether the late submission of the December 21, 1993, initial election date and the Attorney General's approval of that date well after the election, constitutes pre-clearance for purposes of Sec. 5. [Footnote omitted.] The United States Supreme

Court has not addressed the issue of retroactive preclearance under these circumstances, but in two opinions the Justices have approved of its use. In *Berry v. Doles*, 438 U.S. 190, 98 S.Ct. 2692, 57 L.Ed.2d 693 (1978), the Supreme Court determined that a procedure for staggered elections which had not been submitted for approval to the Attorney General was a Sec. 5 violation. As to retroactive preclearance, the Supreme Court stated:

> [W]e adopt the suggestion of the United States that the District Court should enter an order allowing appellees 30 days within which to apply for approval of the 1968 voting change under Sec. 5. If approval is obtained, the matter will be at an end. If approval is denied, appellants are free to renew to the District Court their request for simultaneous election of all members of the Board at the 1978 general election.

Id. 438 U.S. at 193, 98 S.Ct. at 2698. In *NAACP v. Hampton County Election Comm'n*, 470 U.S. 166, 105 S.Ct. 1128, 84 L.Ed.2d 124 (1985), the Supreme Court allowed the appellees 30 days in which to submit the changes to the Attorney General for approval. 'If, however, the Attorney General determines that the changes had no discriminatory purpose or effect, the District Court should determine, in the exercise of its equitable discretion, whether the results of the election may stand.' *Id.* 470 U.S. at 183, 105 S.Ct. at 1138.

890 F. Supp. at 550. The district court for the Northern District of Mississippi also relied on *East Flatbush Election Committee v. Cuomo*, 643 F. Supp. 260, 264 (E.D. N.Y. 1986),

in which a three-judge court held that "retroactive federal approval satisfies the preclearance requirements of Sec. 5." 890 F. Supp. at 550.

The Plaintiffs cite no authority which directly supports their contention that preclearance by the United States District Court for the District of Columbia would not be retroactive. Plaintiffs also erroneously state that the United States Supreme Court suggested "that a district court's reliance on *Berry* as authority for the express adoption of the concept [of retroactive preclearance] may not have been a 'fair characterization of the holding of *Berry.*' " (Plaintiffs' brief at 15.) In doing so, the Plaintiffs misrepresent the Supreme Court's opinion in *NAACP v. Hampton County Election Commission,* 470 U.S. 166 (1985). In that case, the United States Supreme Court did not consider at all whether the lower court's construction of *Berry* was "a fair characterization" of its holding in that case. The United States Supreme Court gave no indication in *Hampton* that the district court's reading of *Berry* was or might be incorrect, but simply did not consider the issue.

In accordance with *Berry, Hampton, Moore v. Caledonia Natural Gas District,* and *East Flatbush,* the Forrest County School District maintains that preclearance by the district court in the District of Columbia would satisfy the requirements of § 5. The district court for the Northern District of Mississippi agrees. For this reason, a stay of the injunction issued in *Dupree* pending that court's ruling could avoid unnecessary irreparable harm to school districts and students across the state.

III. ELEMENTS JUSTIFYING A STAY ARE PRESENT.

In its brief, the Hattiesburg Public School District cites the four prerequisites which it maintains must exist for a court to grant a stay *pending appeal.* Analogizing those four factors to the instant situation, the Plaintiffs then proceed to state that those four factors do not exist in the instant case. For the reasons outlined below, the Plaintiffs contentions are erroneous.

In *Drummond v. Fulton County Department of Family & Children's Services,* 532 F.2d 1001 (5th Cir. 1976), the Fifth Circuit outlined four elements which a party seeking a stay must meet. Those elements were: (1) the likelihood of prevailing on the appeal; (2) the likelihood of irreparable injury from denial of the stay; (3) that the other parties will not be substantially harmed by the grant of a stay; and (4) that granting the stay will serve the public interests. *Id.* at 1002. Given the awkwardness in asking a district court to find that its ruling will likely be overturned, the first requirement has been relaxed somewhat by the courts. *See Thomas v. City of Evanstown,* 636 F. Supp. 587, 590-591 (N.D. Ill. 1986) (substantial question on appeal may be sufficient for stay; noting difficulty for district court objectively to evaluate whether the appellant has shown a strong likelihood that the district court's decision to grant injunction will be overturned on appeal), *cited in United States v. Mansion House Center Redevelopment,* 682 F. Supp. 446, 448 n.2 (E.D. Mo. 1988).

The Fifth Circuit, too, has provided an alternative to the four factors set forth in *Drummond.* In *United States v. Baylor University Medical Center,* 711 F.2d 38 (5th Cir.

1983), the Fifth Circuit, after noting the four requirements set forth above in *Drummond*, stated:

> However, this Court has refused to apply these factors in a rigid, mechanical fashion. Indeed, in *Ruiz v. Estelle*, 650 F.2d 555 (5th Cir. 1981), this Court held that the movant 'need only present a substantial case on the merits when a serious legal question is involved and show that the balance of equities weighs heavily in favor of granting the stay.' *Id.* at 565.

711 F.2d at 39. Although the Forrest County School District maintains that the four factors set forth in *Drummond* exist in the instant case, the factors set forth in *Baylor* are certainly met. In *Baylor*, the Fifth Circuit stated, "We have little difficulty concluding that a serious legal question is involved in this case. Whether Medicare and Medicaid payments constitute federal financial assistance within the meaning of the Rehabilitation Act is a serious legal question that could have a broad impact upon federal/state relations." 711 F.2d at 40. The court noted that failure to order a stay would leave Baylor University Medical Center "between a rock and a hard place." *Id.*

The presence of far-reaching effects or public concerns seems to be paramount to the Fifth Circuit in considering the appropriateness of a stay under the *Baylor* analysis. In *Wildmon v. Berwick Universal Pictures*, 983 F.2d 21 (5th Cir. 1992), the Fifth Circuit lifted a stay pending appeal in part because "[e]xcept for the Plaintiffs, the results of this dispute have no far-reaching effects or public concerns to anyone–unlike those at issue in *Baylor*." 983 F.2d at 24.

Application of the *Baylor* factors to the instant case clearly dictates in favor or [sic] granting a stay. The Court's Final Judgment has far-reaching implications for students, parents, teachers, taxing authorities and public officials across the state. To deny a stay would leave the Forrest County School District (and other districts statewide) "between a rock and a hard place." A ruling in the District of Columbia action could render the harm incurred by the Forrest County School District and other districts unnecessary. For these reasons, not only is there "a substantial case on the merits when a serious legal question is involved," but "the balance of equities weighs heavily in favor of granting the stay." *Baylor*, 711 F.2d 38 at 39.

The Plaintiffs' contentions that the State and Defendants/Intervenors have not established irreparable harm ignore the grave circumstances set out in the Affidavit of Judy Rhodes of the State Department of Education. That harm includes, among other things, a devastating shift of assessed value per child for tax purposes from county districts to municipal districts and the potential for some county districts to be without buildings for certain schools. To reflect the specific effects on the Forrest County School District, the Affidavits of Walter P. Cartier and Bruce Templeton, which were filed in the Hattiesburg desegregation suit, are attached hereto as Exhibits 1 and 2, respectively.

It should also be pointed out that the timing of the U.S. Supreme Court's ruling contributes to the harm caused, given the imminent beginning of the 1996-97 school year. It could not have been anticipated by anyone that the Supreme Court's ruling would result in potential

movement of district lines on the eve of a new school year, depriving officials of adequate time to sensibly and practically implement changes. The irreparable injury which will be caused by this Court's failure to implement a stay will be widespread, affecting students, teachers, parents, taxing authorities, public officials, and public bodies across the state. Should the State successfully obtain preclearance of the disputed statutes in the District of Columbia, then such irreparable injury would have been unnecessarily suffered. The other parties will not be substantially harmed by granting a stay, since maintaining the status quo has not caused harm in the past and will not cause harm now. The Plaintiffs have not shown otherwise. Certainly the harm which will be suffered by parents, students and teachers if a stay is denied will outweigh that harm caused to others, if any, if the stay is granted. Finally, as set forth in the affidavits previously filed by the Forrest County School District in this action (Exhibits 1 and 2), and the Affidavit of Judy Rhodes of the Mississippi Department of Education (attached to the State's motion), the public interest will be served by granting the requested stay.

IV. SCHOOL DISTRICT BOUNDARY CHANGES MAY NOT BECOME EFFECTIVE UNTIL PRECLEARANCE HAS BEEN OBTAINED.

The Plaintiffs have consistently maintained in this action that any change in boundaries must be precleared under § 5 of the Voting Rights Act before going into effect. This three-judge Court agreed with the Plaintiffs' position in its August 27, 1993 opinion, when it cited 28 C.F.R. § 51.13(d) and (e) for the proposition that "any

change in the boundaries of voting precincts . . . and [a]ny change in the constituency of an official or the boundaries of a voting unit . . . requires preclearance." *Dupree v. Moore*, 831 F. Supp. 1310, 1312 (S.D. Miss. 1993). In most, if not all, situations in which school district boundaries would move if this Court denies the request for a stay, the preclearance of those boundary movements has not been obtained from either the United States Attorney General or the United States District Court for the District of Columbia.

The situation in Hattiesburg and Forrest County, the subject matter of the instant suit, is a good example. Although the annexations in question (except perhaps one) were precleared, the movement of school district boundaries was not. At the time the annexations were precleared, school district boundaries had not moved (because Forrest County and the City of Hattiesburg had entered into an agreement that those boundaries would not move in accordance with what was then believed to be state law). As a result, the movement of school district boundaries could not have been presented to the United States Attorney General for consideration and the effect of the annexations on schools was never considered by her. Since it is clear that any such boundary change must be unambiguously submitted for preclearance before it goes into effect, the boundary changes which would result from *Dupree* should be stayed until such time as preclearance has been obtained for each such boundary change.

The Forrest County School District's position is supported by *McDaniel v. Sanchez*, 101 S. Ct. 2224 (1981). In that case, the United States Supreme Court, affirming the

Fifth Circuit, held that boundary changes effected by reapportionment plans had to be precleared under § 5 even though the plan resulted from pending federal litigation. The Supreme Court noted, "[a]s we construe this congressional mandate, it requires that whenever a covered jurisdiction submits a proposal reflecting the policy choices of the elected representatives of the people–no matter what constraints have limited the choices available to them–the preclearance requirement of the Voting Rights Act is applicable." *Id.* at 2238.[2]

If nothing else has been clearly established in this action, it is that boundary changes must be unambiguously submitted for preclearance under § 5. As a result, even should the Court deny the motion for stay on the other grounds addressed herein, it is respectfully submitted that a stay should be granted for each boundary change until such time as said change is precleared by the U.S. Attorney General or the United States District Court for the District of Columbia.

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[2] In *McDaniel*, the Court noted that court-drawn reapportionment plans, in certain circumstances, might not be subject to preclearance under § 5; however, in the instant case, school district lines would be moved pursuant to state law (§ 37-7-611) rather than pursuant to plans drawn up by the courts. Furthermore, the Amended Desegregation Plan (and the boundary changes contained therein) approved by the district court in the desegregation suit (*United States and Pittman v. The State of Mississippi, et al.*, No. 4706 in the United States District Court for the Southern District of Mississippi, Jackson Division) was submitted by the Hattiesburg Public School District, an elected body. As a result, preclearance is required.

Respectfully submitted,

FORREST COUNTY SCHOOL DISTRICT and the Members of the BOARD OF TRUSTEES Thereof in Their Official Capacities, DEFENDANTS/INTERVENORS

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By: /s/ S. Mark Wann
S. MARK WANN

CERTIFICATE OF SERVICE

I, S. Mark Wann, do hereby certify that I have this day forwarded a true and correct copy of the above and foregoing Reply in Support of Motion to Stay to the following counsel of record:

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THIS the 26th day of July, 1996.

/s/ S. Mark Wann
S. MARK WANN

EXHIBIT 1

STATE OF MISSISSIPPI

COUNTY OF FORREST

AFFIDAVIT OF WALTER P. CARTIER

THIS DAY personally came and appeared before me the undersigned authority in and for the said above mentioned County and State, WALTER P. CARTIER, Superintendent of Education of Forrest County School District, who stated on oath as follows, to-wit:

1. That he is the duly elected and acting Superintendent of Education of the Forrest County School District.

2. That all the County School District operations are under his supervision and control.

3. That pursuant to a directive issued by him to employees of the School District, a student head count has been conducted to determine the number of students residing in the Forrest County School District in the City of Hattiesburg.

4. That the number of students residing in the Forrest County School District in the City of Hattiesburg is four hundred eighty nine (489).

5. The area of the Forrest County School District located in the City of Hattiesburg is largely commercial.

6. The loss of one student to Hattiesburg School District is important, however the loss of 489 is detrimental to the operation of our district.

7. The loss of the tax base (estimated to be 29% to 33%), while losing only 20% of the student population and leaving educational responsibility, is devastating.

8. A copy of the proposed budget for the 1996-97 year (1997 fiscal year) is attached as Exhibit "A". Local sources of revenue in round numbers is projected to be $3,000,000, of that amount ad valorem tax brings in 2,795,613 which includes an additional millage for capital improvements and a 4% additional assessment for current needs. (Those figures are based on an estimated 93% collection rate on assessed value). From the tax assessor's projections, Forrest County School District would lose $927,847 which is based on the current year millage rate. These figures indicate to us a possible loss of 33% of local ad valorem revenue while losing 20% of our student population.

9. To make up the loss of revenue from ad valorem taxes now collected on property in the City of Hattiesburg, there will, by necessity, be a shift of tax burden from the fleeing property to the remaining tax base. The shift in tax burden will result in an increased millage from .05509 to approximately .06442 (i.e., from 55.09 mills to 64.42). These calculations take the lost students into account. This amount would allow the Forrest County School District to maintain the same per pupil expenditure from local funds.

10. Much of the growth in the Forrest County School District tax base has been inside the City of Hattiesburg. The new growth is not counted against the ad valorem tax cap imposed by state law. Therefore, the new growth in the tax base has and will continue to be vital to the

continuing educational responsibilities and financial stability of the School District. With new growth always comes additional responsibilities.

11. The area at issue is vital to the continued health of the Forrest County School District. The School District is unable to keep up with all "needs" now. The loss of the tax base to the City of Hattiesburg will create devastating financial problems for the Forrest County School District.

12. Examples of problems are:

A. The Forrest County School District ranks 49th out of 152 in dollar expenditures per pupil.

B. The facility needs of Forrest County School District which are funded through local dollars are in need of renovation, expansion and maintenance Hattiesburg School District has been able to offer a fine arts program with new state of the art facilities while our district plans are thwarted by lack of funds due to constant annexation.

C. The loss of the tax base and collections from new growth in the City of Hattiesburg will have an immediate impact on planned additions in the 1996-97 budget.

Just a few are:

i. No purchase of new school buses from local funds; Our present fleet has an average age of 12 years (too old for safe operations).

ii. Inability to purchase new office equipment for the central office to comply with attendance reports, central purchasing and fixed assets accountability program;

iii. Delay in purchasing 1 new service truck for district maintenance personnel;

iv. Affects on enrollment district-wide will prohibit adequate staff placement to meet needs of students.

13. The School District has committed to computer technology enhancement this year. The loss of tax base will either cause this program to be re-evaluated or terminated.

14. Substantially all the local ad valorem tax revenue is deposited in the District Maintenance fund. The local revenue, together with minimum programs funds, are the main sources of revenue for District Maintenance which totals $9,823,179. From this budgeted amount, $6,286,834 is expended in salaries. Other areas of major expenditures from local funds are utility bills, facility repairs, transportation, operational expenses, administration and repayment of Bond issue and Sixteenth Section loan.

15. Several years ago the School District committed to a Bond issue of $4,000,000 requiring a payback of $376,675 yearly. The taxing of local funds must repay the debt. If the City of Hattiesburg is successful in adding the territory in Forrest County to its school district, then the City of Hattiesburg should be required to repay a prorata portion of the Forrest County School District's Bond. In addition to the Building Bond issue, currently outstanding is a yearly obligation of $75,655 transportation loan of which Hattiesburg should assist in repaying a prorata share.

16. The difference in the tax base of the Forrest County School District with, versus without, the territory in the City of Hattiesburg is great. Not only will there be a shift

of tax burden but a transfer of the most lucrative commercial area without the transfer of equal responsibility. The result is a significant transfer of wealth leaving the major responsibility. Such a result affects the vitality of the Forrest County School District.

17. The budget process of the Forrest County School District is substantially complete. The budget hearing has already been held. The final budget has been adopted. The School District must submit to the Board of Supervisors the School District's request for ad valorem tax revenue on or before July 15th. The Board of Supervisors will then set the levy to meet the ad valorem tax requirements of the School District. All of this is based on the 1996 land roll which includes the territory which the City of Hattiesburg wants.

18. In addition to the financial impact this action results in the following racial impact:

A. Forrest County loss of students:

		W	%W	B	%B	Other
1995-96 # of students	2527	1612	63.8	915	36.2	1
Projected loss of students	489	109		379		1
Remaining students	2041	1503	73.6	536	26.3	

This reflects a significant change in black/white ratio. Forrest County School District population changes from a 63.8% white population to a 73.6% white population. This demonstrates a 10% loss of black students.

B. The Forrest County Agricultural High School will likewise be affected.

		W	%	B	%
1995-96 # of students	475	370	77.9	105	22.1
Projected loss of students	86	8		78	
Remaining students	389	362	93	27	7

This reflects a significant change in black/white ratio. The Forrest County Agricultural High School population changes from a 77.0% white to a 93% white district. This demonstrates a 15% loss of black students.

19. In 1976 Petal Schools became a separate district and continued to accept students from the Earl Travillion area (all black) These students fall in the new Hattiesburg annexation and should be addressed by the Petal School District.

20. The needs, revenues and all projections for the 1996-97 school year have been based on retaining the School District intact. In the event that the territory in the City Hattiesburg is transferred from the Forrest County School District to the Hattiesburg School District, then such a transfer should only take place after establishing appropriate time lines. Proper educational and financial planning would dictate a transfer for the 1997-1998 school year and the 1997 tax year. To do otherwise will cause substantial problems for the Forrest County School District, Forrest County Board of Supervisors, Forrest County Tax Assessor, the residents and the tax payers of

Forrest County, both in and outside the City of Hattiesburg.

21. The School District opposes any transfer of territory. But, if a transfer does occur, the Forrest County School District pleads for the transfer only after an appropriate time period allowing for proper planning. To do otherwise would be totally inequitable.

22. The desegregation order under which the Forrest County School District currently operates, includes a "majority to minority" provision. Under that provision, any student which is a member of the majority racial group at his or her school may transfer to a school at which said student would be a member of the minority racial group. The purpose of said provision is to promote racial desegregation among the schools in the district. Over the years, many students have taken advantage of said provision, particularly resulting in the movement of black students from Earl Travillion School (which is predominantly black) to Dixie Attendance Center (which is predominantly white). Should the Hattiesburg Public School District's motion to modify its desegregation plan be approved, then the Earl Travillion School will be transferred to the Hattiesburg Public School District, thereby preventing the desegregation which has been encouraged by the "majority to minority" provision in the Forrest County School District's desegregation order.

23. The overall effect of transferring the annexed areas in question to the Hattiesburg Public School District would be to further erode the tax base of the Forrest County School District and to seriously impair the Forrest

County School District's ability to maintain a desegregated school district in compliance with its desegregation order.

FURTHER, Affiant saith naught.

/s/ Walter Cartier
WALTER P. CARTIER

SWORN TO AND SUBSCRIBED BEFORE ME this the 26th day of June, 1996

/s/ Geneva Swagert
NOTARY PUBLIC

MY COMMISSION EXPIRES:

June 11, 1997

EXHIBIT "A"

FORREST COUNTY SCHOOL DISTRICT
COMBINED BUDGET
FISCAL YR 1996-97

ORIGINAL
7-1-96

	GENERAL	SPECIAL REVENUE	CAPITAL PROJECTS	DEBT SERVICE	ENTERPRISE	INTERNAL SERVICE	TRUST	TOTAL
REVENUE								
LOCAL SOURCES	2226655	242000	20000	555640			1700	3054003
INTERMEDIATE SOURCES	0	0	0	0			0	0
STATE SOURCES	6310210	862114	0	0			0	7172324
FEDERAL SOURCES	126500	1479703	0	0			0	1606203
SIXTEENTH SECTION	0	0	0	0			152500	152500
OTHER FINANCING SOURCES	350607	132776	577100	0			3500	1063983
TOTAL REVENUE	9013972	2716873	605100	555640			157700	13049093
FUND EQUITY, JULY 1, 1996	1039500	163600	1200000	42000			288145	2733245
TOTAL	10053472	2880363	1805100	597640			445845	15782428
EXPENDITURES								
INSTRUCTION	6014577	1344190	0	0			3000	7361767
SUPPORT SERVICES								
STUDENTS	214911	68983	0	0			0	283894
INSTRUCTIONAL STAFF	414970	146740	0	0			0	561728
GENERAL ADMINISTRATION	235794	154422	0	0			0	390216
SCHOOL ADMINISTRATION	548014	0	0	0			0	548014
BUSINESS SERVICES	110799	20782	0	0			0	131581
OPERATION & PLANT MAINT	658290	27950	0	0			1000	687240
TRANSPORTATION	427110	84923	0	0			500	512533
CENTRAL	0	100	0	0			0	100
NONINSTRUCTIONAL SERVICES	52000	765240	0	0			700	817940
SIXTEENTH SECTION	0	0	0	0			15600	15600
FACILITIES ACQ & CONSTRUCT.	0	0	1741100	0			0	1741100
DEBT SERVICE	61534	85420	0	537143			0	684097
OTHER FINANCING USES	397383	68983	0	2500			136000	604866
TOTAL EXPENDITURES	9135390	2787721	1741100	539643			156800	14340654
FUND EQUITY, JUNE 30, 1997	918082	112642	64000	58005			289045	1441774
TOTAL	10053472	2880363	1805100	597648			445845	15782428

EXHIBIT 2

STATE OF MISSISSIPPI

COUNTY OF FORREST

AFFIDAVIT OF BRUCE TEMPLETON

THIS DAY personally came and appeared before me the undersigned authority in and for the above mentioned County and State BRUCE TEMPLETON, an employee of the Forrest County Tax Assessor's Office and an appraiser certified by the State Tax Commission of the State of Mississippi, and holds a Certified General Appraisal License Number GA-432 from the State of Mississippi, who stated on oath the following:

1. That he is an employee of Forrest County Tax Assessor's Office in the Equalization Department and he is a certified appraiser recognized and certified by the State Tax Commission, and also holds a State of Mississippi Certified General Appraisal License Number GA-432.

2. That his duties include appraising and assessing property in Forrest County, Mississippi, and supervising the preparation of the real and personal property rolls in Forrest County.

3. That the assessed value of real property in the Forrest County School District for the tax year 1994 was $26,195,820.00, tax year 1995 was $27,442,187.00, and tax year 1996 is $28,793,309.00.

4. That the assessed value of real property in the Forrest County School District in the City of Hattiesburg (which is the subject matter of the proposed modifications in the desegregation plan) for 1994 was $6,903,015.00, for 1995 was $7,470,594.00 and for 1996 is $8,096,000.00.

5. The total value of personal property assessments in the Forrest County School Districts for 1995 was $3,098,207.00 of which $1,475,808.00 was in the City of Hattiesburg. The value of personal property in the Forrest County School District for 1996 is $3,111,891.00 of which $1,894,468.00 is in the City of Hattiesburg.

6. Reflected on the next page is the assessment of property in the Forrest County School District and the assessed value of the property located within the City of Hattiesburg (now included in the Forrest County School District):

	TAX ASSESSMENTS		
1994	FORREST COUNTY SCHOOL DISTRICT	PART IN THE CITY OF HATTIESBURG	PERCENTAGE IN CITY
Real, personal, vehicles, public utilities and mobile homes:	$46,783,957	$ 9,540,947	21%
1995			
Automobiles	12,403,975	1,455,075	–
Mobile Homes	571,991	22,770	–
Real Property	27,442,187	7,470,594	28%
Personal Property	3,098,207	1,475,808	48%
Public Utilities	7,543,580	7,950	—
TOTAL:	$ 51,059,940	$ 10,432,197	21%
1996			
Automobiles	$ 18,045,235	$ 6,818,127	–
Mobile Homes	791,519	25,845	–

Real Property	28,793,188	8,096,000	29%
Personal Property	3,111,891	1,894,468	61%
Public Utilities	7,543,580	7,950	–
TOTAL:	$58,285,413	$ 16,842,390	29%

7. The current millage rate for the Forrest County School District is .05509. If the assessed value in the Forrest County School District in the City of Hattiesburg is lost by the School district from its tax base, the tax loss at the current millage rate is $927,847.27 ($16,842,390 X .05509 = $927,847.27).

8. The area in the Forrest County School District in the City of Hattiesburg is primarily commercial. New development, adding new growth to the tax base, in the area is substantial. In the Forrest County School District for 1996, real property added to the assessment equals $5,532,505. Of this property, $1,068,169.00 in the City of Hattiesburg. Additional personal property is valued at $418,660 of which $418,660 is in the City of Hattiesburg.

9. The tax lien date is January 1st of each year. The 1996 land roll is now complete and will be delivered to the Board of Supervisors the first Monday of July.

FURTHER, Affiant saith naught.

/s/ Bruce Templeton
BRUCE TEMPLETON

SWORN TO AND SUBSCRIBED BEFORE ME this the 25th day of June, 1996.

/s/ Debra Russell, Circuit Clerk
NOTARY PUBLIC

By: Kathy Parrett, DC

MY COMMISSION EXPIRES:

Nov. 1996

APPENDIX E

IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION

JOHNNY DUPREE, et al. PLAINTIFFS

vs. Civil Action No. H90-0043(W)

MIKE MOORE, et al. DEFENDANTS

STATE DEFENDANTS' REPLY IN SUPPORT OF MOTION FOR STAY

Initially it should be pointed out that the State defendants' motion seeks to modify the injunction entered by this Court through its Judgment of December 29, 1995, by staying the implementation of that Judgment as requested in the motion. Authority for the relief requested, whether expressly invoked or not, springs from Rule 60(b) as well as Rule 62. Both rules are necessarily implicated in the motion and both are relied upon by the State defendants. This Reply will address points made by the plaintiff in its Response.

a. This Court Has Clear Jurisdiction To Consider The Motion

The major argument of the plaintiff's Response is the notion that this Court does not have jurisdiction to entertain this motion because the relief sought by the motion is characterized in that motion as a stay. The plaintiff, incorrectly, contends that the motion is an attempt to have this

Court stay a mandate from the Supreme Court. The plaintiff seeks to revive a long discredited procedural device and cites inapposite authority in the effort.

In *Standard Oil Of California vs. United States*, 429 U.S. 17 (1976) the Supreme Court expressly rejected the rule the plaintiffs would have this court adopt. It ruled that district courts may modify judgments notwithstanding the fact that the judgment has been summarily affirmed by the Supreme Court, and may do so without leave of the Supreme Court. The modification sought in the district court in *Standard Oil* was to have the judgment set aside entirely, not merely stayed temporarily as sought here. This rule is followed by the Court of Appeals for the 5th Circuit, *see, Ingraham vs. U.S.*, 808 F.2d 1075, 1080-81 (5th Cir. 1987), and by district courts in this circuit, *see, Dow Chemical vs. Consumer Product Safety Comm.*, 464 F.Supp. 904, 907 (W.D. La. 1979), and *Bailey vs. Ryan Stevedoring Co., Inc.*, 443 F.Supp. 899, 901 (M.D. La. 1978).

The authority cited by the plaintiff has no application to this proceeding. A few examples should suffice. *Brinkman vs. Department of Corrections*, 857 F.Supp 775 (D. Kan. 1994), and *Gander vs. FMC Corp.*, 733 F.Supp. 1346 (E.D. Mo. 1990) merely interpret 28 U.S.C. §2101 and hold that a district court may not consider a request for a stay while a party applies for a writ of certiorari from the Supreme Court to a Court of Appeals. They simply do not stand for the proposition they are cited for. They do not hold that a district court may never modify, or stay, an injunction, which it is required to superintend, merely because the matter has been ruled upon by an appellate court. In *Meredith vs. Fair*, 306 F.2d 374 (5th Cir. 1962) the 5th Circuit merely held that a single judge of the 5th

Circuit could not stay a panel ruling especially when that single judge was not a member of the panel. In dicta, relied upon by plaintiff, the Court said that stays should not issue after a mandate is issued, but it noted that such stays could be granted in emergencies. In *Belyeu vs. Johnson*, 82 F.3d 613 (5th Cir. 1996) the Court merely held that a district court did not have jurisdiction to stay an execution of a death sentence while habeas review was pending in the appeals court. In *Burrows vs. Falck*, 11 F.3d 729 (7th Cir. 1993) the 7th Circuit held that when it remanded an attorneys' fees matter to a district court with instructions on the amount that could be granted, the district court could not ignore that mandate and set the rate at the same amount which had been reversed by the appeals court.

b. Rule 60(b) (5) and (6) Provides Authority To Grant Relief

The plaintiff recognizes that the Court has jurisdiction under Rule 60(b) to grant relief, presumably including a stay, so long as that relief is labeled as "relief from judgment" rather than as a stay. However, the plaintiff contends that because the movants did not expressly invoke 60(b) it is unavailable and that, in any event, the matters set forth in the motion do not warrant relief.

Rule 60(b) (5) provides that relief from the judgment may be had when "it is no longer equitable that the judgment should have prospective application." This provision contemplates modifying injunctions when conditions change. Rule 60(b) (6) provides that this Court "may relieve a party . . . from a final judgment . . . [for]

any . . . reason justifying relief from the operation of the judgment." The fact that the declaratory judgment action in the District of Columbia has been filed constitutes a material change in circumstances since the entry of the injunction. It is now quite possible that the code sections enjoined may yet be validated. The movants believe it is probable that preclearance will be obtained. In any event, the pendency of that action renders this Court's judgment of invalidity less certain. The foundation for the issuance of the injunction was the finding of no preclearance together with the absence of any pending action that would change that condition.

It is doubtful that this Court would have crafted the injunction to have immediate effect if *Mississippi vs. Reno* had been pending at the time of the entry of the judgment. Almost certainly the Court would have stayed imposition of the injunction until that proceeding had been resolved. That stay should be entered now. The State of Mississippi should not be penalized for maintaining its good faith position in this litigation. The considerable costs of maintaining the action in the District of Columbia and the good faith belief that the Attorney General's objection to §47 was a nullity were legitimate reasons for the State not to file a separate action while this action was pending.

The plaintiff cites a 2nd Circuit case, *DeWeerth vs. Baldinger*, 38 F.3d 1266, 1270 (2nd Cir. 1994) for the proposition that a court should not grant Rule 60 relief where the basis for the motion was rejected by the court in its initial decision. That rule does not aid the plaintiff here for several reasons. First, this Court has never considered the pendency of an action in the District of Columbia.

Second, while the ultimate consequences of a remedy not limited to the voting aspects of the alleged violation have been pointed out to the Court, this Court has not ruled that those consequences should occur even without giving school districts time to prepare for them. The Court's Judgment was entered in December. It is doubtful that the same immediate injunctive relief would have been ordered had the Judgment been entered only weeks before the beginning of a school year. Third, while it might be assumed that the Court has implicitly denied the defendants' motion to have any remedy the Court might impose be limited to matters affecting voting as was done in *Dotson vs. City of Indianola,* 551 F.Supp. 515 (N.D. Miss. 1982)[1], it is not clear that the Court has truly issued a "ruling" on the issue for purposes of *DeWeerth* analysis. This basis for relief was not expressly rejected. It was simply not addressed by the Court.

The plaintiff cites *Batts vs. Tow-Motor Forklift Co.,* 66 F.3d 743, 747 (5th Cir. 1995), for the proposition that the requested relief should be granted only if extraordinary circumstances are present. Those circumstances are present. *Batts* also reiterates the well accepted standard in

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[1] In *Dotson* the Section 5 remedy for a voting rights violation was limited to matters that affected voting. Lands in unprecleared annexations were not de-annexed. The remedy simply was that voters in those annexed areas could not vote in municipal elections. Other features associated with incorporation such as taxes and police and fire protection continued. The comparable voting remedy in *Dupree* would simply be to forbid voters in annexed areas from voting in those municipal elections, e.g. mayoral contests, that could affect the composition of city school boards.

the 5th Circuit that "Rule 60(b) (6) is a grand reservoir of equitable power to do justice in a particular case", *id.* at 747. The plaintiffs cite *Edward H. Bohlin Co. vs. Banning Co.*, 6 F.3d 350, 357 (5th Cir. 1993) for the proposition that relief should be granted only where the imposition of the judgment would be manifestly unjust. As pointed out in the original motion, that condition exists.

c. Relief In The District Of Columbia Will Apply Retroactively

In the likely event that preclearance is obtained from the District Court in the District of Columbia, the ultimate effect will be to retroactively legitimize the operation of §47 and §52 since 1986. The concept of retroactive preclearance was first established in *Berry vs. Doles*, 438 U.S. 190 (1978). There the Court established that if preclearance is obtained after a change has been implemented, the implementation is valid. In *NAACP vs. Hampton County Election Comm.*, 470 U.S. 166 (1985), the Court added the provision that the election results could stand with post hoc preclearance unless some equitable consideration compelled a contrary result. Retroactive preclearance has also been recognized in *East Flatbush Election Committee vs. Cuomo*, 643 F.Supp. 260, 264 (E.D. N.Y. 1986), and in the *Northern District of Mississippi in Moore vs. Caledonia Natural Gas District*, 890 F.Supp. 547, 550 (N.D. Miss. 1995).

Even if the plaintiff is correct in its unsupported contention that retroactive preclearance can only occur in the remedy phase of a 3-judge action, that relief could be obtained in this proceeding after the resolution of the

District of Columbia proceeding. Nothing in the plaintiff's filing seriously challenges the fact that the public school system in Mississippi stands to suffer two waves of dislocations in the event the requested stay is not granted and in the further event the D.C. action is successful.

d. The Movants Have Established The Elements Necessary For Relief

The plaintiff incorrectly asserts that the movants have addressed the factors applicable to a motion for stay pending appeal. The plaintiff then makes much of the fact that the movants have not alleged "likelihood of success on the merits". The plaintiff is confused about the movants position. The factors for a stay pending appeal do not apply. The element of likelihood of success does not apply. The movants did assert irreparable injury and a balancing of the equities. These are proper considerations for any request for a stay.

The plaintiff makes no substantive response to the movants' showing of injury. The plaintiff merely accuses the State of favoring one set of schoolchildren over another. This is palpable nonsense. Without question, as shown in the motion, the injury to schoolchildren will be borne in some instances by those in city districts and in other instance by those in county districts. As also shown in the motion the State is unconcerned whether the injured students attend county or city districts. The motion is for the benefit of those schoolchildren, whether in city or county districts, who will suffer lost educational opportunities because their school district will suddenly

lose a substantial part of its tax base for the upcoming school year. The plaintiff takes pride in the fact that its action will also hurt city schoolchildren in some instances and, incredibly, holds this fact out to the Court as if it strengthens the plaintiff's position. The issue here is not, as the plaintiff wishfully suggests, a question of deciding which group will be favored, it is a matter of ensuring that none will be needlessly harmed.

The plaintiff's critique of Judy Rhodes' affidavit is largely incorrect and misleading. In exhibit 14 to its Response, the plaintiff listed nine numbered paragraphs of criticisms of the affidavit. These will be addressed by numbered paragraph.

(1) The affidavit uses ad valorem and millage figures from the 1994-1995 school year. This is because it is the last year that data for all districts is available. The plaintiff uses data from its 1995-1996 reports and professes to believe that the figures in the Rhodes affidavit must be inaccurate. The plaintiff's response is disingenuous on this point.

2. The State defendants are unsure of the effect of the annexations prior to 1986. Because Lamar County stands to lose these areas it is likely that Ms. Rhodes affidavit, based on the fact that Lamar County presently administers those areas, actually overstates the financial worth of the Lamar County School District and understates the financial worth of the plaintiff.

3. The plaintiff implies that other sources of local funding will make up for lost ad valorem revenues. In fact, many of the local revenue sources are generated for a specific purpose such as food service or transportation.

Where sixteenth section revenue is concerned the availability of those dollars will depend on whether the sixteenth section lands are located in the annexed area. In the case of Lamar County the local school board has set the expendable portion of the Exxon settlement aside for technology and building projects and not for operations. Where gaming revenues are concerned in the case of Harrison County, those funds are currently being escrowed and are not available for expenditure per a current court order.

4. The plaintiff takes a very casual attitude by asserting that Forrest County could easily increase its millage rate by 35.5% and maintain its current ad valorem funding.

5. The plaintiff asserts that equity funding will help offset losses. It is correct that equity funding will eventually help, but equity funding will not have an impact until the 1999 fiscal year.

6. The plaintiff asserts that the Minimum Education Program will offset loss of funds. The Minimum Education Program requires the State to pay for the number of teachers employed or the number of teachers allowed, whichever is *smaller* per Miss. Code Ann. §37-19-5. If a district did not employ those teachers the funds would not flow to the district.

7. The plaintiff asserts that other districts in the State will simply ignore *Dupree* and continue on as before. Without a stay there is no authority for the status quo to be maintained. Because of the disproportion between the transfer of tax base and students, the problems with physical facilities will not exist at all school districts.

Some transfers will be mostly tax base with few students. School districts which share the plaintiff's philosophy of public service will happily enrich their tax base without regard for the welfare of schoolchildren in adjoining districts. School districts throughout the State are aware of the consequences of the decisions and their responsibilities thereunder.

8. The plaintiff contends that Forrest County has factored *Dupree* into its planning for this school year and will not be injured by a sudden change in circumstances. Whether or not this is correct, other districts are not prepared for the changes facing them.

9. The plaintiff contends that Hattiesburg is fully ready to accommodate new students. Again, whether this is so or not for the plaintiff, other districts are not prepared and other schoolchildren will suffer as a result.

CONCLUSION

The plaintiff, piously and shamelessly, states that the true "thrust" of this case is that the State is allowing "irreparable harm by permitting a racially discriminatory law to be enforced." If this is the plaintiff's genuine concern it should have joined the defendants in their effort to have the Court's remedy be limited to voting aspects of the alleged violation. This would have neutralized any racially discriminatory effect. In reality the "thrust" of this motion is an effort to prevent harm to schoolchildren. The requested relief is a simple matter. The changes threatened should not occur until all legitimate preclearance efforts have failed. In the event the State is ultimately unsuccessful, those changes should

occur after a time interval which would allow school districts time to adjust their circumstances so that harm to schoolchildren can be minimized to the extent possible. The plaintiff has pointed to no injury it will suffer if the stay is granted. Equity requires that the stay be granted.

Respectfully submitted,

STATE OF MISSISSIPPI, et al.

by: **MIKE MOORE**
ATTORNEY GENERAL

by: /s/ Robert E. Sanders
ROBERT E. SANDERS
ASSISTANT ATTORNEY GENERAL
BAR NO. 6446

Office of the Attorney General
P.O. Box 220
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(601)359-3815

CERTIFICATE OF SERVICE

This is to certify that I, Robert E. Sanders, an Assistant Attorney for the State of Mississippi, have caused to be mailed this date, via United States Postal Service, first-class postage prepaid, a true and correct copy of the foregoing to:

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This the 26th day of July, 1996.

/s/ Robert E. Sanders
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APPENDIX F

ORDER LIST

FRIDAY, SEPTEMBER 6, 1996

ORDER IN PENDING CASE

A-151 DUPREE, JOHNNY, ET AL. V. MOORE, MIKE, ET AL.

The application to vacate the stay entered by the United States District Court for the Southern District of Mississippi presented to Justice Scalia and by him referred to the Court is denied.

Supreme Court, U.S.
FILED
DEC 2 1996
CLERK

No. 96-669

In The

Supreme Court of the United States

October Term, 1996

JOHNNY DUPREE, et al.,

Appellants,

v.

MIKE MOORE, et al.,

Appellees.

On Appeal From The United States District Court For The Southern District Of Mississippi

MOTION TO DISMISS OR AFFIRM

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Counsel for Appellees The Lamar County, Mississippi, Board of Education and Trustees, in Their Official Capacities, Dr. Fred Howell, Fred Boudreaux, Dr. Jim Siders, Robert P. Sandifer, and Tommy Graham

December 2, 1996

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

10 PP

QUESTION PRESENTED FOR REVIEW

Whether the stay imposed below sustains the equitable policies affirmed in *Lopez v. Monterey County, California*, ___ U.S. ___, ___ S.Ct. ___, ___ L.Ed.2d ___, 1996 WL 637045 (U.S.), 1996 U.S. LEXIS 6826?

PARTIES TO PROCEEDINGS BELOW

Appellees, The Lamar County, Mississippi, Board of Education and Trustees, adopt the list of Parties to Proceedings Below as set forth in the Motion of Appellees to Dismiss or Affirm presented by Appellees the Forrest County School District and the Members of the Board of Trustees and the Attorney General of the State of Mississippi.

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INTRODUCTION

The Lamar County, Mississippi, Board of Education and Trustees, joins the Motion to Dismiss or Affirm presented by the Forrest County School District and the Members of the Board of Trustees and the Attorney General of the State of Mississippi.

Lamar and Forrest County School Districts were granted leave to intervene in the early stages of this litigation by the Three-Judge District Court, below.

STATUTES INVOLVED

The statutes and regulations involved are set forth in the Appellants' Jurisdictional Statement and the Forrest County School District and the Members of the Board of Trustees and Attorney General of the State of Mississippi's Motion to Dismiss or Affirm.

STATEMENT OF THE CASE

The Lamar County, Mississippi, Board of Education and Trustees, adopts the summary of fact set forth by the Three-Judge Court, below, and the statement of the facts presented by the Forrest County School District and the Members of the Board of Trustees and the Attorney General of the State of Mississippi.

STATEMENT OF THE FACTS

The Lamar County, Mississippi, Board of Education and Trustees, adopts by reference the Statement of Facts submitted in the Motion to Dismiss or Affirm presented by The Forrest County School District and the Members of the Board of Trustees and the Attorney General of the State of Mississippi.

ARGUMENT

I. The Stay Imposed by the Three-Judge Court Below Sustains the Equitable Polices Set Forth in *Lopez v. Monterey County, California*, ___ U.S. ___, ___ S.Ct. ___, ___ L.Ed.2d ___, 1996 WL 637045 (U.S.), 1996 U.S. LEXIS 6826.

To vacate the stay entered by the district court would create an injunction under § 5 of the Voting Rights Act which fails to identify what "change" is to be rendered unenforceable. The complaint in this action challenged a lack of § 5 preclearance for a comprehensive state statutory scheme reorganizing Mississippi school districts.[1] The litigation thus far has now indentified two subsections of that school law as subject to preclearance. No express terms of an injunction have been spelled out. No order has indicated what portion of the State's school system is linked to "any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting . . . " 42 U.S.C. § 1973c. No one knows

[1] Uniform School Law of 1986, § 37-6-1 *et seq.*, Miss. Code Ann. (Supp. 1986).

what property, if any, must be ceded, where, or whether the court must limit a voting remedy to a particular election, and if so, which one.

The appellants, plaintiffs below, have never asked that any election be enjoined.[2] They have never demonstrated standing to enjoin state-wide elections.[3]

In accord with *Lopez v. Monterey County, California*, ___ U.S. ___, ___ S.Ct. ___, ___ L.Ed.2d ___, 1996 WL 637045 (U.S.), 1996 U.S. LEXIS 6826, the three-judge district court below has ordered that "the covered jurisdiction submit its election plan to the appropriate federal authorities for preclearance as expeditiously as possible." 1996 U.S. LEXIS at page *26. Also in accord with *Monterey County*, the district court below has not formed an interim plan, and has thereby avoided having "interposed itself into the § 5 approval process in a way that the statute does not contemplate." *Id.* at *27. Instead, it has sought to insure that "The requirements of federal scrutiny should be satisfied without further delay. *See Berry v. Doles*, 438 U.S. at 192, 98 S.Ct. at 2693," *Id.* at *28.

Lopez v. Monterey County identifies a three step process: "The three-judge district court may determine only

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[2] The plaintiffs presented facts specific to their town, without showing that any voting impact results to other school districts. However, a state-wide injunction against the State's school law as a whole causes administrative havoc. A state-wide injunction affects a multitude of other school districts never examined by the court.

[3] Neither have they demonstrated that enjoining elections would cure alleged vote dilution where the plaintiffs' municipality appoints its school board.

whether § 5 covers a contested change, whether § 5's approval requirements were satisfied, and if the requirements were not satisfied, what temporary remedy, if any, is appropriate," *Id.* at *26. The *Dupree* court below is still engaged in the second step, determining "whether § 5's approval requirements were satisfied." Similarly, the *Monterey County* court had not ordered an interim voting plan as remedy there until the § 5 case before the District of Columbia court was voluntarily dismissed before any judicial determination was made. The *Dupree* court, in equity, has held up imposing a "temporary remedy, if any." This Court, in *Lopez v. Monterey County*, approved such discretion. "We acknowledged in *Clark* [*Clark v. Roemer*, 500 U.S. 646 (1971)] that earlier decisions such as *Perkins v. Matthews*, 400 U.S. 379, 91 S.Ct. 431, 27 L.Ed.2d 476 (1971), and *Berry v. Doles*, 438 U.S. 190, 98 S.Ct. 2692, 57 L.Ed.2d 693 (1978) (*per curiam*), held that where a covered jurisdiction had already conducted elections under an unprecleared plan, it might be appropriate for the district court to afford local officials an opportunity to seek federal approval before ordering a new election." *Id.* at *21. The court below has followed this procedure.

There is nothing in this record which shows that an election is immediately impending, and in fact, no school board elections in Mississippi are expected before the District Court in D.C. has an opportunity to reach a decision. The stay issued by the *Dupree* three judge district court is therefore proper under the precedent existing under *Perkins v. Matthews, supra*, and *Berry v. Doles, supra*, as now reaffirmed by *Monterey County*.

CONCLUSION

This Court should decline to interrupt the process put in place by the three-judge district court below. The Motion to Dismiss or Affirm should be granted.

Respectfully submitted,

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Supreme Court of the United States

OCTOBER TERM, 1996

JOHNNY DUPREE, ET AL.,

Appellants,

v.

MIKE MOORE, ET AL,

Appellees.

On Appeal from the United States District Court for the Southern District of Mississippi

APPELLANTS' BRIEF OPPOSING MOTION TO DISMISS OR AFFIRM

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1. To the extent the District Court's order is an attempt to stay its own judgment, the District Court lacked jurisdiction to do so. Appellees mischaracterize Appellants' position regarding this issue. At no time have Appellants argued that appellate leave was necessary for Appellees to file their "Motion for Emergency Stay" by which they sought to delay implementation of the District Court's injunction against enforcement of the voting change effected by the repeal of Miss. Code Ann. § 37-7-611. Appellants argued below that the District Court had no authority to stay its judgment after this Court issued its certified judgment.

On appeal, Appellees attempt to distinguish the authorities cited by Appellants based on the fact that they dealt with this Court's certiorari jurisdiction rather than its appeal jurisdiction. Appellees do not, however, argue that the inability of a district court to stay its own judgment after issuance of the appellate mandate turns on whether the court's jurisdiction is appeal or certiorari; they merely point out that this case has not arisen by way of certiorari. This is a distinction without a difference. As the authorities cited in Appellants' main brief establish, a fundamental principle of jurisdiction is that a district court cannot stay its own judgment after the appellate court issues its mandate.

2. The parties agree that the District Court has authority under Fed. R. Civ. P. 60(b)(5) and (6) to modify an injunction. The parties disagree on whether the stringent standard for relief under Rule 60(b) has been met. Appellees argue that the court has "broad discretion" to modify the injunction "as it sees fit." (State/Forrest County Mot. p.7) Appellees fail, however, to dispute or even address the standard for modification stated in *Rufo vs. Inmates of the Suffolk County Jail*, 502 U.S. 367 (1992), and *United States vs. Swift & Co.*, 286 U.S. 106 (1932). *Rufo* holds that an order modifying an injunction requires "a significant change in circumstances" and that a modification cannot be based on events that were anticipated at the time of the original judgment. *Swift* teaches that a modification requires "[n]othing less than a clear showing of grievous wrong evoked by new and unforeseen conditions."

Appellees do not deny that they have known of and fully understood the effect of § 37-7-611 since at least 1990, when this action was filed. They make no effort to explain how their understanding of the effect of this statute can be reconciled with *Rufo*. The Appellees also do not contest Appellants' position that the District Court's order is contrary to *Rufo*'s holding that modification of an injunction cannot perpetuate a constitutional violation.

Appellees' position is that significant changes support relief under Rule 60(b)(5). These changes are Mississippi's decision to seek preclearance after it lost *Dupree* and the timing of this Court's affirmance of the District Court's

holding that the repeal of Miss. Code Ann. § 37-7-611 had not been precleared. Appellees contend that a party's tactical litigation choices outweigh considerations of finality of judgments. As explained in Appellants' main brief, that position was rejected in *Ackermann vs. United States,* 340 U.S. 193 (1950). Adopting Appellees' position would encourage parties to forego exercising choices prior to the conclusion of a case in favor of seeking relief under Rule 60(b). That view is inconsistent with the purpose of Rule 60(b) and would result in more attempts to set aside or modify final judgments. In turn, litigation costs would increase, and an already crowded docket would become more congested.

Appellees' reliance on the timing of this Court's decision is simply a recognition that litigation is unpredictable and subject to unforeseen delays. In a Voting Rights Act case, this Court has answered the question of who should bear the burden of delays: "Congress expressly indicated its intention that the States and subdivisions, rather than citizens seeking to exercise their rights, bear the burden of delays in litigation." *Perkins vs. Mathews,* 400 U.S. 379, 396 (1971).

3. Although Appellees argue that "grave and irreparable injury ... would occur statewide if the school district boundaries were allowed to be moved before the imminent school year," they did not identify any other county in Mississippi in which changes would be carried out for the school year that began in August 1996. Only in the three school districts involved in *Dupree* were changes scheduled to take place for that school year. Appellees' position that the potential effect on school districts outweighs voting concerns is contrary to *Lopez vs. Monterey County,* 117 S.Ct. 340 (1996). There, this Court pointed out that enjoining an election held under an unprecleared plan would have left the jurisdiction without a judicial election system. This complication did not, however, "change the basic nature of the § 5 preclearance process." *Id.* at 348. Absent extreme and unanticipated circumstances not present here, "§ 5's prohibition against implementation of unprecleared changes *required* the District Court to enjoin" enforcement of the change. *Id.* at 347-48.

4. Appellees contend that the remedy remains an open question because the District Court has never issued an "appropriate" remedy. They do not address the effect of this Court's summary affirmance of the District Court's judgment, which enjoined the State from enforcing both the implicit and explicit repeal § 37-7-611. As explained in Appellants' main brief, a summary affirmance "without doubt reject[s] the specific challenges presented in the statement of jurisdiction" and disposes of the "precise issues presented and necessarily decided." *Mandel vs. Bradely,* 432 U.S. 173 (1977). An injunction against enforcement of the unprecleared statute is the appropriate remedy for a jurisdiction's failure to comply with the Voting Rights Act. The *Dupree* court issued an injunction. Therefore, the remedy issue has been decided.

Appellants urge that probable jurisdiction be noted.

Respectfully submitted,

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